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ANNUAL REPORT
OF THE
ATTORNEY-GENERAL

OF THE
STATE OF NEW YORK
For the Year Ending December 31, 1907

WILLIAM SCHUYLER JACKSON
ATTORNEY-GENERAL

TRANSMITTED TO THE LEGISLATURE APRIL 2, 1908

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Annual Report of the Attorney-General for the Year 1907.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 31, 1907.*

To the Legislature of the State of New York:

Pursuant to the requirements of section 56 of the Executive Law, I beg herewith to submit the Annual Report of the Attorney-General for the year 1907.

Respectfully,

W. S. JACKSON,

Attorney-General.

ATTORNEY-GENERAL'S OFFICE.

1907.

William S. Jackson.....	Attorney-General.
Charles P. Williams.....	First Deputy Attorney-General.
(Promoted December 1, 1907, to succeed Frank White, resigned November 15, 1907.)	
George P. Decker.....	Second Deputy Attorney-General.
(Promoted December 1, 1907, to succeed Charles A. Dolson, resigned November 20, 1907.)	
William A. Deford.....	Deputy Attorney-General.
Frank H. Mott.....	Deputy Attorney-General.
Timothy I. Dillon.....	Deputy Attorney-General.
William V. Cooke.....	Deputy Attorney-General.
John Deneen.....	Deputy Attorney-General.
(Appointed May 10, 1907.)	
Albert C. Olp.....	Deputy Attorney-General.
(Promoted from Confidential Clerk, October 1, 1907.)	
James J. Barrett.....	Deputy Attorney-General.
(Promoted from Assistant Deputy, January 1, 1908.)	
Michael H. Quirk.....	Assistant to Deputy.
Edward H. Leggett.....	Land Clerk.
Joseph B. Ford.....	Private Secretary.
Louis E. Riley.....	Confidential Clerk.
(Promoted from Confidential Messenger, October 1, 1907.)	
William M. Thomas.....	Hearing Stenographer.
M. L. Walker.....	Confidential Stenographer.
Arthur D. Hecox.....	Stenographer.
(Title changed to "Stenographer and Record Clerk," December 16, 1907.)	
Frances L. Walters.....	Stenographer.
Anna E. Burke.....	Stenographer.
Edward J. Cordial.....	Stenographer.
Ambrose Sutcliff.....	Confidential Messenger.
(Promoted from Messenger of New York Bureau, December 1, 1907.)	
James H. Hernon.....	Page.

NEW YORK CITY BUREAU.

James A. Donnelly.....	Deputy.
Joseph D. Edelson.....	Assistant Deputy.
Charles Firestone.....	Assistant Deputy.
(Resigned November 11, 1907.)	
Anna M. Karr.....	Confidential Stenographer.
Ambrose Sutcliff.....	Messenger.
(Promoted to Confidential Messenger, Albany Office, December, 1, 1907.)	

ERIE COUNTY DEPUTY.

Gen. Samuel M. Welch.

REPORT

ANTI-TRUST INVESTIGATIONS.

Shortly after my term of office commenced, I requested the Legislature to provide a fund that would enable me to investigate violations of the Anti-Monopoly Law of the State and of all other laws which it is the duty of the Attorney-General to enforce. This request was granted and for the first time since its creation, the Department was in a position to undertake such inquiries without waiting for the complaints of citizens. It is inadvisable at this time to reveal the full extent of the operations of the Department in this direction.

You undoubtedly are aware of the work done in the investigation of the American Ice Company, the proposed telephone monopoly, the telegraph combine and the affairs of the New York City Railway Company, concerning which this report treats in detail elsewhere. In addition to these investigations, I have caused to be made investigations of alleged violations of anti-monopoly laws in many cities of the State, and as a result I have secured evidence of the existence of illegal combinations in restraint of trade and for the purpose of fixing and controlling the prices of necessities of life. Many of these investigations have been completed and I am ready to proceed with respect to them in the courts just as soon as the necessary funds are made available for that purpose. Other investigations are still in an incomplete state and cannot be proceeded with satisfactorily until the Department's financial resources are restored.

The investigation of the telegraph companies operating in this State produced incontrovertible proof that they have entered into a combination and agreement to raise rates and divide profits. I believed this to be in violation of chapter 690 of the Laws of 1899 (the Donnelly Anti-Trust Act), but the lower courts thus far have held that telegraph companies do not come within the prohibition of that act. While I hope to reverse this judgment

in the appellate courts, nevertheless I believe that chapter 690 of the Laws of 1899 should be amended so as to apply specifically to telegraph and telephone companies. Telegraph and telephone service assuredly is a public necessity and should be clearly so defined by statute. Combinations or agreements whereby rates for such service are raised or maintained or profits divided should be prohibited and those responsible for such combinations and agreements should be made liable to fine and imprisonment.

FOREST PRESERVE.

So many complaints reached me soon after I took office of alleged depredations by individuals and corporations upon State lands constituting the forest preserve that I deemed it my duty to take official cognizance of them to the extent of conducting an investigation that at least would be sufficiently thorough to satisfy me as to whether there was any substantial foundation for such complaints. At the time I undertook this investigation I was aware of the fact that the Legislature had assumed to clothe the Forest, Fish and Game Commission with the power of the Attorney-General, so far as the legal work connected with the forest preserve is concerned, and that my right as Attorney-General to represent the State in such matters was disputed. This situation was emphasized when I undertook to recover for the State the valuable forest lands about Ampersand pond, which in direct violation of the provisions of the Constitution, and the statute, had been stipulated out of the possession of the State by a former legal representative of the Forest, Fish and Game Commission. In that case, which is referred to more in detail elsewhere in this report, the trial court held that I could not maintain the action as Attorney-General, my constitutional powers having been restricted to that extent by the statute creating the Forest, Fish and Game Commission and the acts amendatory thereof. Notwithstanding this situation I determined to continue the investigation so far as the financial resources of my department would warrant, and the results have amply justified the effort.

That considerable areas of the forest preserves have been encroached upon, denuded and stolen there can be no doubt. Lum-

ber and paper companies have stripped them of timber and confiscated the land while individuals have laid out great private parks, assuming to appropriate to their individual uses and enjoyment the natural waters and the game thereon, and have set up barriers which the rest of the citizens of the State, upon proper and legitimate excursions into the forest preserve, are prohibited from passing. Large tracts of public land which the State is prohibited by the Constitution from conveying or leasing in any manner whatsoever, have, in ways more or less mysterious, passed from the possession of the public into that of individuals and private corporations and there is grave danger that, unless the State adopts a policy with respect to the preservation of the wild forest lands that will effectually and forever put an end to their despoilment, the great natural watershed which they constitute will be either seriously impaired or wholly destroyed.

I found early in the inquiry that I did not have at my disposal the facilities and the means essential to make this investigation as thorough and comprehensive as the important interests of the State involved so imperatively demands, and I therefore report to the Legislature the situation as I have found it, in order that you may take such action as in your judgment may appear advisable. In this connection I respectfully suggest that a thorough nonpartisan investigation by a legislative committee equipped with ample authority and resources and determined upon ascertaining the facts regardless of consequences, undoubtedly would have the desired results. Should such an inquiry be undertaken, I would gladly render any legal assistance which the committee might desire.

PROSECUTION OF ELECTION CRIMES IN THE METROPOLITAN DISTRICT.

A special effort was made by this Department to enforce the election laws at the last general election in New York city and to prosecute violations of the same. To that end and that the guilty might be punished regardless of party affiliation, I appointed both Democratic and Independence League lawyers as election deputies to attend the various police courts on registration and election days and named three special deputies to manage

and conduct investigations into election frauds before the several grand juries in the counties composing the Metropolitan district and to prosecute indictments resulting therefrom.

Between November 5, 1907, and December 31, 1907, I secured the indictment of forty-five persons for violations of the election laws. Of that number twenty were tried and nineteen convicted. Upon the trial of one, the jury disagreed and he will be tried again. Eight of the convicted men were sentenced to State prison for terms varying from one and one-half to four and one-half years. Four were sentenced for terms of from six months to one year in the penitentiary. Three were granted suspension of sentence and three were awaiting sentence on the first of the year. The trials of twenty-five were pending December 31, 1907.

While the number of indictments and convictions was unusually large, there is abundant ground for the belief that the great majority of the election criminals escaped because of the inadequacy of the system for the enforcement of the election laws in the Metropolitan district. Investigations conducted by my special deputies and complaints arising from reputable sources indicated conclusively that proper efforts were not made either to prevent illegal voting or to cause the apprehension of illegal voters on election day, and I am satisfied that no material progress will be made in suppressing and punishing election crimes in Greater New York until the system is reformed and more intelligent provision made by the State in that direction. The matter is of sufficient importance in my judgment to warrant immediate consideration by the Legislature, especially for the reason that this class of crime is in more than an ordinary degree a menace to the State and to good government.

CRIMINAL PROCEEDINGS UNDER EXECUTIVE REQUIREMENTS.

During the year I have been called upon by the Governor to manage and conduct important criminal proceedings before grand juries and in courts in several counties of the State.

On April 12, 1907, I was required by the Governor to present to the grand jury of Clinton county, in place of the district attorney of that county, evidence of violations of the Liquor Tax

Law. For such purposes I appointed as my deputy Royal R. Scott, Esq., counsel for the State Excise Department, and fourteen indictments were secured, the management of which was subsequently turned over to the district attorney of Clinton county, I not having been required to conduct the trial thereof.

On September 14, 1907, and upon the petition of the depositors' committee of the defunct German Bank of Buffalo, I was required by the Governor to conduct the prosecution in Orleans county of Eugene A. Georger, in place of the district attorneys of Orleans and Erie counties, upon indictments growing out of the failure of that institution.

On October 31st, following, I was further required by the Governor to prosecute indictments against Arthur E. Applyard and Paul Werner and to conduct further investigations before the grand jury of Erie county of criminal charges growing out of the failure of the German Bank. I appointed Henry W. Killeen, Esq., as my deputy for the purposes set forth in the requirement, and upon evidence which had not theretofore been presented to the grand jury, new indictments against Georger and Werner were secured, the trials of which will be had early in the coming year.

On September 17, 1907, I was required by the Governor to conduct an inquiry into criminal charges made by a certain newspaper against the district attorney of Broome county and countercharges of criminal libel. The grand jury of Broome county subsequently exonerated the district attorney of Broome county and indicted for criminal libel the publisher and proprietor of the newspaper.

The grand jury sitting in Queens county in June, 1907, recommended that I conduct an investigation into the purchase of lands by the city of New York for Kissena park in the borough of Queens. Subsequently Hon. Garrett J. Garrettson, presiding justice of the Second Judicial District, urged me to take the matter before the grand jury sitting in Queens county in January, 1908. I appointed as my special deputy in this matter Nathan Vidaver, Esq., and the preliminary investigation made by him prior to January 1, 1908, revealed such convincing evidence of official corruption and fraud in the purchase of Kissena

park lands that I have decided to request the Governor for a requirement to conduct an inquiry before the January grand jury of Queens county.

In this connection, I wish to advise the Legislature that this is not the only requirement I shall ask of the Governor to manage and conduct investigations before grand juries. I mention this solely to the end that the Legislature in providing funds for this Department may give due consideration to the necessities arising in the event that the executive requirements requested are granted.

TAX CASES.

The two cases, the People ex rel. Travelers' Insurance Company v. Kelsey, as Comptroller, and People ex rel. Connecticut Mutual Life Insurance Company v. Kelsey, as Comptroller, have been disposed of by the Court of Appeals, and the contention of the Comptroller sustained.

These cases involved the question of whether the Legislature could provide that the franchise tax upon life insurance companies be computed upon the volume of business done in any year prior to that for which the tax was to be imposed or paid. That right was disputed on the ground that such a statute was retroactive and an unwarrantable interference with vested rights. The Court of Appeals unanimously acquiesced in the reasoning of the Appellate Division to the effect that, in imposing a franchise tax upon the privileges of transacting business within this State, it was competent for the Legislature to provide that the tax might be computed in any way which, to the Legislature, seems proper, and that such companies, if they desired to reap the benefits of transacting business within this State, must submit to the terms which the State sees fit to impose as the price of the privilege.

A question of great importance to the State arose under the law relating to the tax on transfers of stock. The Duffy-McInerney Company, a domestic corporation, was organized to carry on business in Rochester, N. Y., as a department store. It was incorporated November 14, 1906; its capital stock is \$2,000,000. The entire stock was subscribed by the incorporators, and its cer-

tificate of incorporation showed that it had been paid in full on the 1st day of April, 1907. The stock, however, had not been issued, and the question arose whether or not, upon the issuance of such stock, by the company, the tax thereon must be paid. The Comptroller held that, upon the issuance of such stock, the tax thereon must be paid. The company contested this ruling of the Comptroller, and a case was agreed upon by me to get an interpretation of the courts of the question in dispute. The case was submitted to the Appellate Division, Third Department, at the November term, and recently that court decided adversely to the ruling of the Comptroller. An appeal has been taken to the Court of Appeals, and a decision of that court will be obtained at the earliest practicable moment.

There were two cases arising under the Mortgage Tax Law — the People ex rel. The Henry Elias Brewing Company against Frank Gass as Register of the County of New York, and the People ex rel. The Cooper Union for the Advancement of Science and Art against Frank Gass as Register of the County of New York.

The question involved in The Henry Elias Brewing Company matter is the taxability of a mortgage owned by the relator on a leasehold for five years, the unexpired term of which when mortgaged was less than three years. The court at Special Term held that to entitle the mortgage to be recorded the fees provided by the Mortgage Tax Law should be first paid and denied the application of the relator for a peremptory writ of mandamus requiring him to record said mortgage without the payment of the tax. An appeal was taken to the Appellate Division in the First Department and the order of the Special Term was unanimously affirmed. From said order of affirmance an appeal has been taken to the Court of Appeals, which will be argued at the January term.

In the Cooper Union matter the question involved is the taxability of a mortgage owned by Cooper Union, that institution claiming that by virtue of the special act of the Legislature from which it received its charter of incorporation (chapter 279, Laws of 1859) there was an irrevocable exemption from taxation then granted to it. On the 6th day of July, 1906, it presented

to the register of New York county a mortgage owned by it to secure the payment of \$10,000 and requested the register to record said mortgage in his office upon payment of the ordinary recording fees. This the register declined to do unless the fees provided by the Mortgage Tax Law were first paid. The relator thereupon applied to the Supreme Court at Special Term for a peremptory writ of mandamus, requiring the register to record said mortgage without the payment of the tax. This application was granted and at the request of the State Board of Tax Commissioners the Attorney-General appeared for the register and appealed to the Appellate Division in this Department from the order granting the writ. The Appellate Division unanimously affirmed the order of the Special Term and from said order of affirmance an appeal was taken to the Court of Appeals. The appeal was argued in the Court of Appeals on November 19th, and on December 20th the court reversed the orders of the Special Term and the Appellate Division with costs. Judge Willard Bartlett, writing the opinion in which all the other judges concur, held that as at the time Cooper Union received its charter from the Legislature there existed in the Constitution then in force (Constitution of 1846, art. 8, § 1), a provision reserving the right to alter or amend charters specially granted to corporations or institutions, Mr. Peter Cooper when he endowed Cooper Union must be presumed to have known of the existence of this reservation and that the Legislature did not and could not abdicate its powers to repeal the exemption as to any and all of the property of Cooper Union, and that it was free to exercise that power whenever it deemed that sufficient reason existed to do so.

The effect of this decision is that mortgage (on real estate) owned by corporations or institutions claiming to be exempt from taxation by virtue of the provisions of special charters granted by the Legislature, to entitle them to be recorded by the register, are, nevertheless, liable to the tax imposed by the Mortgage Tax Law, and I have no doubt that the decision is also authority for the proposition that the Legislature may, by reason of the reservation contained in the Constitution, amend charters specially granted to corporations or institutions so as to defeat claims of exemption from taxation alleged by such corporations or institutions specially chartered.

SPECIAL FRANCHISE TAX LITIGATION.

During the year 1907, 364 proceedings were instituted to review by certiorari the determination of the State Board of Tax Commissioners in assessing special franchises. Assessments to the amount of approximately \$500,000,000 are involved.

Upon the written consent of the tax district, in which each special franchise affected is situated, sixty-eight of these assessments, concerning which actions were instituted, were equalized, to correspond to the rate at which other real property was determined by the State Board of Equalization to be assessed.

Referees were appointed in thirty-one of these proceedings and the trials therein are now being held. Eighteen of them were discontinued.

Among the cases tried before referees in which the assessments were sustained, were the matters of the Jamaica Water Supply Company, Brooklyn City Railroad Company and Brooklyn, Queens County and Suburban Railroad Company.

In the Matter of the Interborough Rapid Transit Company, argued by my predecessor, the assessment was canceled by order of the Supreme Court and I have appealed to the Appellate Division from said order.

Other references tried, but not decided, are the matters of the Buffalo, Williamsville & Electric Company, Troy Union Railroad Company and the Lockport Hydraulic Company.

On January 1, 1907, there were pending before referees in the city of New York, about 300 proceedings, brought by railroad companies, gas and electric companies, water companies and other corporations to review assessments for various years. I determined to push these matters and compel, if possible, delinquent corporations to pay to the city of New York the vast amount of taxes due thereon, over \$20,000,000, and toward the accomplishment of which result no very great effort had been heretofore made. With that end in view the trials of these cases have been pushed with vigor until most of them are ready for final disposition.

In the Matter of the Third Avenue Railroad Company, the decision in which will settle the basis upon which many of the street

railroad assessments in New York city will be made, the evidence has all been submitted, briefs have been filed and I am daily expecting a report of the referee.

I am proceeding now with sixty cases before referees in New York city, in which hearings are being held daily.

COURT OF CLAIMS.

Claims continue to be filed after the occurrence of severe storms affecting the waters of the canal system. Property-owners along creek bottoms and lowlands naturally subject to floods, have succeeded, often-times, in recovering damages where their crops have been destroyed by floods, arising from a commingling of the canal waters with storm water and where they have not given proof that had there been no canal system, their crops would not have been destroyed by the same storm.

This Department considers that such recoveries impose an unjust burden upon the State and for that reason has advised against the settlement of a large number of pending claims. The question if necessary will be carried to the Court of Appeals.

During the year 1907, nine sessions of the Court of Claims have been held, four at Albany, two at Rochester, and one each at Syracuse, Utica and Buffalo.

The number of claims disposed of during the year was 464, the amount claimed being \$812,241.44, exclusive of interest. The amount awarded in these claims was \$103,778.19.

Of the 464 claims disposed of, 128, amounting to \$436,618.26, were dismissed with no award.

There were 110 more claims disposed of in the year 1907 than in the year 1906.

The number of claims disposed of in the year 1907 exceeds the number filed by 97.

It will be seen by the foregoing that the percentage of recovery is about 12¾ per cent. of the amount claimed. This percentage is very gratifying, as it is the smallest recovery that has been had against the State for a number of years — and this, when it is considered that twenty-three Barge Canal claims, amounting to over \$84,000, were disposed of, because in those claims the only question to be litigated was as to the amount of damage.

The jurisdiction of the Court of Claims has been for years a question of speculation and uncertainty, and does not seem to have been finally determined. It has been held that the court has jurisdiction to hear and determine only claims arising on contracts. The Court of Claims seems to hold to this construction of the statute, and, therefore, the Legislature enacts year after year special legislation conferring upon the court jurisdiction to hear the claim of some citizen who believes he has a claim against the State. To avoid all this special legislation and to give to every citizen the right to have his claim determined before a court of justice and equity, it seems to me proper to suggest that the Court of Claims be given general jurisdiction respecting claims which may arise against the State.

CANAL CLAIMS.

There were 429 claims arising from the canals, amounting to \$430,419.86 disposed of. Of this number, 109, amounting to \$132,336.41, were dismissed.

The claim of Smiths and Powell Company at Syracuse, for \$17,145, for damage caused by raising the dam at Phoenix, and thereby raising and setting back the waters of the Seneca and Oswego rivers, was tried, and a judgment in favor of the State entered. This was regarded as a test case and when finally determined, will dispose of several claims of the same character.

The claim of Jay N. Ostrander, for damages in the sum of \$2,025, was tried at Buffalo in June, and judgment entered for \$240. From this judgment an appeal has been taken to the Appellate Division. The Ostrander claim was filed for damages to crops in Orleans county, in July, 1902, caused by the overflow of Oak Orchard Feeder. The final disposition of this case may determine the liability in a number of other claims.

The claim of Lucien N. Rowe was tried at the Utica term. This was a claim for damages to premises in Hamilton county, caused by raising the dam at the outlet of Sixth and Seventh lakes of the so-called Fulton Chain in said county, thereby causing the water from such lake to back up and overflow the premises of the claimant. A number of claims of this nature were tried; and it was stipulated that they abide the decision in this claim. The

Court of Claims entered judgment for the State, and from this an appeal has been taken. When the appeal has been finally determined, it will dispose of a number of claims arising from the same cause.

BARGE CANAL CLAIMS.

Twenty-three Barge Canal claims, amounting to \$84,639.98 were disposed of, and judgments aggregating \$8,099.21 awarded. Thirteen of these claims for \$60,609.21 were dismissed.

OTHER THAN CANAL CLAIMS.

Twelve claims existing for damages not arising from the use or management of the canals, amounting to \$297,181.60, were disposed of. The judgments in these claims amounted to \$15,972.60. Six of these claims, amounting to \$243,671.91, were dismissed.

During the year 1907, 367 claims have been filed, representing in the aggregate, \$1,290,548.85.

There are about 2,325 claims pending.

BARGE CANAL AND LAND MATTERS.

The Attorney-General is *ex officio* a member of the Commissioners of the Land Office and is the legal adviser of that board and chairman of its standing committee on the hearing of remonstrances. Accordingly his opinion is asked and his special reports required upon nearly all matters coming before the board. There have been referred to me by the Land Board during the past year 102 applications, of which twenty-six were contested applications for grants of land under water for hearing by the standing committee.

The Attorney-General is also *ex officio* a member of the Canal Board. The legal business in connection with the Barge Canal has grown enormously during the past year, owing principally to the appropriation by the State Engineer and Surveyor of 708 distinct parcels of real estate for the use of said canal, my approval of the title of each parcel being a prerequisite to the payment to the former owners, whether under a contract by the special examiners and appraisers, approved by the Canal Board or under a judgment of the Court of Claims. These country

land titles frequently are very defective owing to carelessness of the owners in recording deeds and satisfactions of mortgages and involve painstaking care in their examination.

Although this barge canal work has thrown so much additional work on this Department, no additional appropriation has ever been made by the Legislature to the Attorney-General on account thereof. I have been forced to throw this work upon my land clerk, who has no assistant and whose time is fully required in connection with the regular Land Board matters and in connection with my return to surrogates' citations in the matter of estates of decedents dying without heirs leaving property which, in many cases, passes to the State by escheat. I was served with 190 surrogates' citations in 1907, and in each case a thorough investigation is made to the end that the State's interests in these decedent estates be fully protected.

I am also required by the Code to appear for the People in foreclosure and partition suits where the State has interest. In 1907 I appeared for the People in ninety-six real estate actions. I have also examined thirty other titles to lands acquired by the State for the new educational building for the New York State Fair Ground, Rome State Custodial Asylum, St. Lawrence State Hospital, New Paltz State Normal School, and Eastern New York Reformatory, Sir William Johnson Hall, Agricultural School at St. Lawrence University, and new State prison site at Stony Point.

AGRICULTURAL LAW.

The total number of violations of the Agricultural and Pure Food Laws referred to this office by the Agricultural Department during 1907 has been	1,156
Numbers of these violations were against the same parties and were joined in one complaint, making the total number of cases brought by the State.....	947
The State has been successful by settlement or judgments in.	491
Cases discontinued by reason of insufficient evidence, death of defendant, judicial decisions, etc.	80
Judgments were rendered against the People in.....	18

This Department has endeavored to compel observance of the Agricultural Law. Many offers of settlement have been rejected by this office in an attempt to impress upon persistent violators the fact that each offense cannot be settled for a practically insignificant sum, but that it is the aim of this office to secure a punishment which will have due weight in the prevention of continuous offenses. Such cases have later been brought to trial and judgments ranging from \$200 to \$2,359 recovered.

In the case of *People v. Anton Koster*, milk special, a verdict of \$1,800 was recovered and defendant appealed. The question of cumulative penalties was raised and the Appellate Division drew a very enlightening distinction between cumulative penalties, where the action is begun by an individual for personal gain and accumulated penalties provided for under a health statute, where action is begun by the State for the protection of the entire citizenship. Appellant claimed act unconstitutional in so far as it prohibits the sale of wholesome milk, merely because it has been deprived of some of its richness. Court held that sale as milk raised presumption of pure milk, and Legislature may prohibit fraud in the sale of milk. Appellate Division affirmed judgment of trial term unanimously.

In the case of *People v. Louis Luke*, tomato ketchup, No. 1987, the trial justice dismissed complaint, on ground that "Tomato Ketchup" was a distinctive name and the ingredients need not be stated on the label. The State appealed and secured a reversal, the Appellate Court passing upon the question of "distinctive names."

In the case of the *People v. Waters et al.*, the Court of Appeals affirmed a judgment in favor of the defendants, but the court sustained the contention of the People that "an oral warning by the seller that the butter is renovated butter is no excuse for a failure to comply with the statute."

The questions involved in the above cases were of grave importance in the prosecution of agricultural and pure food violations and were all determined favorably to the contention of the State.

Several large judgments have been recovered and remain uncollected, but the amount actually collected exceeds the collections of any former year.

OPINIONS.

A very important part of the work of the Attorney-General's office, and one which involves a great amount of work, is the furnishing of opinions to the various State officers and State departments.

Very many difficult questions have been presented during the year, growing out of the construction of the new barge canal, in which the liability of the State for damages, in the taking of lands, the altering or obstruction of highways, interference with the drainage systems of municipalities, and numerous other possible interferences with property rights, was involved.

Many questions have also been presented by the Insurance Department, calling for a construction of the provisions of the Armstrong Insurance Law.

Not only have many requests been made by State officers and State departments for opinions, but numerous requests for opinions have been received from town and county officers and from individuals.

It has been my endeavor to furnish, as promptly as possible, opinions requested from any source. I have included in this report only the most important ones which are of public interest, and copies of all opinions rendered by me during the year are on file in my office.

HEARINGS.

During the year public hearings have been given by the Attorney-General or one of his deputies in twenty-two different proceedings, which are more fully referred to in one of the schedules annexed to this report.

NEW YORK OFFICE.

The business of the branch office of the Attorney-General in New York city has increased very largely during the past year. The litigation consequent upon the failure of several banking institutions in the city of New York and Brooklyn placed a very large amount of work upon that office, while its ordinary business has continued to grow.

A very large amount of the business of the Attorney-General is done there for the convenience of lawyers and others having business with the State, and every effort has been made to facilitate the business of persons residing in and near New York city.

The report of the Deputy Attorney-General in charge of the New York office, containing a schedule of the litigations in which the State was interested during the year, is transmitted with this report, and is appended hereto.

RECEIVERSHIPS.

During the year a great deal of time and effort has been devoted to winding up the affairs of insolvent corporations which had been in the hands of receivers for a number of years. A glance at the accompanying schedules briefly summarizing the work done during the year, will readily disclose its extent and importance.

The effort which has been made to safeguard the rights of persons beneficially interested in these insolvent corporations, has been productive of substantial benefit.

While it was impossible to close up the cases of the People against the Manhattan Fire Insurance Company, and the People against the Republic Savings and Loan Association, the results already achieved will inure to the benefit of the creditors and stockholders, and there is every possibility that the receivership proceedings in both cases will come to an early termination.

It has been the earnest endeavor of the Attorney General's Department to close up all pending receivership proceedings at the earliest practicable moment consistent with the best interests of the estate involved, and I respectfully call your attention to the statement reciting the status of each of the actions instituted for the dissolution of corporations prior to January 1, 1907.

The financial panic in New York in October last resulted in the suspension of payments and the closing of the following State moneyed corporations: The Knickerbocker Trust Company, the Williamsburgh Trust Company, the Jenkins Trust Company, the International Trust Company, the Borough Bank of Brooklyn, the Hamilton Bank in the city of New York, the Brooklyn Bank

in the city of New York, the Terminal Bank, the Twelfth Ward Bank and the United States Exchange Bank.

On the evening of the 21st of October, George I. Skinner, first deputy and then acting Superintendent of Banks, requested my presence in New York to advise him concerning the action to be taken by him in the event of the suspension of business by the Knickerbocker Trust Company which was expected the next day. As was anticipated the Knickerbocker Trust Company suspended payments on the 22d of October, and requested the acting Superintendent of Banks to take charge of its property and assets, which he forthwith did. He immediately reported to the Attorney-General the suspension of the trust company, and that he had taken possession of its property and business, and on account of the serious condition of many other banking institutions in the city of New York and the great burden placed upon the Banking Department in making examinations into the condition of their affairs, he requested the Attorney-General to take prompt action in placing the Knickerbocker Trust Company in the hands of receivers.

The following day the necessary papers were prepared for the commencement of an action for the dissolution of the trust company, based upon the information as to its condition furnished by the acting Superintendent of Banks, and upon an affidavit made by him, showing its condition, and that it was in "an unsafe condition and unable to pay its depositors on demand, and that it has become, and is, necessary that the affairs of said defendant should be administered under the direction of this court, by a receiver or receivers to be appointed by it, and deponent requests that a receiver or receivers of the said bank, its property, business and assets, be appointed for that purpose."

Pursuant to the requirements of sections 1784-1786 and 1808 of the Code of Civil Procedure, on the 25th day of October, 1907, I commenced an action in the Supreme Court, Richmond county, for the dissolution of the Knickerbocker Trust Company, and for the appointment of receivers of its property and business. The venue of this action was laid in Richmond county for reasons that appeared to me ample and sufficient, and under the authority vested in me by section 1 of chapter 378 of the Laws of 1883, as

amended by chapter 282 of the Laws of 1896, which provides that, "any action or proceeding hereafter brought by the Attorney-General on behalf of the People of the State against any corporation, for the purpose of procuring its dissolution or the appointment of a receiver, or the sequestration of its property, may be brought in any county of the State, to be designated by the Attorney-General."

The Special Term of the Supreme Court appointed as temporary receivers of the trust company Mr. Ernst Thalmann, of the well-known banking firm of Ladenberg, Thalmann & Company, Mr. Otto T. Bannard, president of the New York Trust Company, and General Henry C. Ide. Mr. Bannard declined the appointment as receiver, and Mr. George L. Rives, former corporation counsel of the city of New York, was appointed in his place.

The order appointing the receivers required the defendant to show cause, at a special term of the court on November 2, 1907, why the receivership should not be made permanent. At that time, the defendant appeared and submitted to the court that it was making efforts to resume business and requested that the motion be postponed. The Attorney-General consented and thereafter stipulated further adjournments and the motion is still pending. I have done everything to facilitate a resumption of business and at this time the outlook is most promising.

On the 24th and 25th days of October, the other institutions mentioned above voluntarily closed their doors, owing to the lack of funds to meet the demands of their depositors, and each of them requested the Superintendent of Banks to take possession of its property and business.

The Superintendent of Banks, in accordance with such request, immediately took possession of the business and property of each of said institutions, and on the 26th day of October, 1907, duly reported to the Attorney-General, in writing, that each of said institutions had "suspended payment and has reported to this department (the Banking Department) that it was unable to meet the demands of its depositors. It appears to me that it is unsafe and inexpedient for said corporation at this time to continue business. I have taken possession of the property and the busi-

ness of said bank and report the facts to you for such action as may be required by law."

This report was made by the Honorable Clark Williams, who had just been appointed Superintendent of Banks by the Governor.

Upon receipt of said report I caused such investigation as I could to be made into the condition of the several institutions then in the hands of the Superintendent of Banks. Representatives of these institutions waited upon me and represented that the suspensions of such institutions was temporary only; that such institutions were in a solvent condition, and if they were permitted to have an opportunity they would, within a very short time, be able to realize upon their assets and resume business. Various plans were submitted to me by representatives of said institutions, looking to the resumption of business, and I advised all persons interested in said institutions that any plans for the resumption of business must be submitted to the Superintendent of Banks for his inspection and approval, as such plans involved practical banking questions with which the Superintendent of Banks was familiar, and that it was for him to determine whether or not, at any time, any banking institution should continue in business or resume business; that the Attorney-General would be governed entirely by the judgment of the Superintendent of Banks, as to whether or not the plans for resumption submitted were feasible or practicable, and whether it would be safe for such institutions to resume business; and that, whenever the Superintendent of Banks certified to the Attorney-General that, in his judgment, it was safe and practicable for any of such institutions to resume business, and that he had approved of its plans, the Attorney-General would also approve such plans and would not take any proceedings against any such institution, for its dissolution or otherwise.

Frequent conferences were held by the Attorney-General or his representatives with the Superintendent of Banks, concerning the affairs of such institutions, and on or about the 12th day of November, 1907, the Attorney-General, not having taken any action up to that time, was advised by the Superintendent of Banks that, in his judgment, it would be necessary to place all of them, with the exception of three, hereinafter mentioned, in the hands of receivers.

At a conference with the Superintendent of Banks held on November 13, 1907, it was determined that the Superintendent of Banks should notify all of the suspended institutions that they must submit to him on the next day, in writing, their plans for resumption, for his approval or disapproval, and that if they failed to present to him satisfactory plans, the Attorney-General should proceed against them in the manner provided by law. The Attorney-General and Superintendent of Banks acted in complete harmony at all times.

On the 14th of November, 1907, I commenced actions against the Williamsburgh Trust Company, the Hamilton Bank, the Borough Bank, the Brooklyn Bank, the Jenkins Trust Company, and the International Trust Company, they having failed to present to the Superintendent of Banks, as required by him, satisfactory plans for the resumption of business. On that day, Superintendent Williams made an affidavit in each of said motions, setting forth the suspension of the said institutions, and his conclusion that it was in an unsound and unsafe condition, and that it was inexpedient for it to continue in business, and that he had so notified the Attorney-General on the 26th day of October, 1907, and that, on that day, he had duly taken possession of said defendant; and stated that, "from his examination of the affairs of said defendant and from his knowledge of its condition, deponent further says that said defendant is in an unsafe condition and unable to pay its depositors and other creditors promptly on demand and in full, and that it has become and is necessary that the affairs of the said defendant shall be administered by a receiver or receivers, to be appointed by and subject to the direction of the court."

On the 16th day of November, 1907, I applied to a regular Special Term of the Supreme Court, held at Kingston, in the county of Ulster, Justice Betts presiding, for the appointment of receivers of the said institutions, and receivers were appointed by that court, at that time, in each case.

The orders appointing the receivers contained orders to show cause, returnable at the Albany Special Term, on the 30th day of November, 1907, why the receiverships should not be made permanent. At that time, each of said defendants appeared in court

by counsel and requested a postponement of the hearing of such motion, to enable them to present to the court, at a future date, plans for the resumption of business, and upon the representations that such plans were in preparation and would be submitted to the court, the hearing on said motions were postponed to the 12th, 13th and 14th days of December, 1907, at which time the receiverships were made permanent in the cases of the Williamsburgh Trust Company, the International Trust Company and the Brooklyn Bank, an additional receiver being appointed for the Williamsburgh Trust Company and also for the Brooklyn Bank.

The motions for the appointment of permanent receivers for the Jenkins Trust Company and the Borough Bank were postponed from time to time, and are still pending. The defendants are continuing their efforts to resume business, the Attorney-General having consented to the postponement of the hearing of such motions to enable them, if possible, to consummate their plans.

In the case of the Hamilton Bank, upon the defendant submitting to the court a plan for the resumption which in the judgment of the court would enable it to resume business, but which had not been submitted to or approved by the Superintendent of Banks, the court made an order on the 26th of December, 1907, discharging the temporary receiver and restoring its business and property to the defendant.

Much criticism has been made of the action of the Attorney-General in bringing these actions in the Third Judicial District, instead of the First or Second Judicial District, where the suspended institutions were located, and for suggesting the appointment of receivers who were not residents of New York or Brooklyn.

The provisions of the Act of 1883, as amended in 1896, above quoted, expressly confer upon the Attorney-General absolute discretion to bring such actions in any county in the State that he may designate. This statutory provision has existed for many years. The Legislature undoubtedly had good reasons for enacting that law, and there are very good and substantial reasons why such law should continue in force.

There were, and are, very good and substantial reasons why these actions should have been brought in some other jurisdiction than in New York and Kings counties.

Soon after these institutions were closed, information came to me, from the Banking Department and other sources, of criminal acts that had been committed from time to time by the officers and directors of most of them. At my request the Superintendent of Banks detailed one of his expert examiners to make an examination into the affairs of these institutions to ascertain what criminal and illegal acts had been committed. Such examination disclosed a gross negligence upon the part of the directors and the most reckless and criminal management of the affairs of the Williamsburgh Trust Company, the Jenkins Trust Company, the Borough Bank of Brooklyn, the International Trust Company and the Hamilton Bank.

Forgeries, larcenies, overdrafts, false reports to the Banking Department and other violations of the Banking Law and the penal statutes of this State were discovered, and persons officially connected with at least five of the six institutions placed in the hands of receivers have been indicted and are now awaiting trial. All of the men responsible for the failure of these banks and trust companies and those who have been indicted were prominent and of high standing, possessing the greatest confidence of the people, and very influential in their respective communities; and these facts furnished sufficient reasons for seeking a jurisdiction that would be entirely uninfluenced by and removed from either local passion or prejudice; and sufficient reasons for the appointment of receivers who would have no possible connection with, and who could not be influenced by the criminals who were anxious to escape the penalty of their own acts, and who were more solicitous of saving themselves and their own property than they were of paying the depositors and other creditors whose interests they had sacrificed.

These men and others, by the gross neglect of their duty as trustees of the property of the depositors and others, were responsible for the failure of these institutions, and no amount of criticism from any source can alter that fact. The Attorney-General, nor any other official or person outside of these institutions, is in any

way responsible for the disaster brought to the thousands of depositors whose money had been criminally wasted by those charged with its safe-keeping. Had the officers and trustees of those institutions been honest and faithful to their trusts, those institutions would not have failed and there would have been no necessity for the appointment of any receivers.

The men appointed receivers were appointed by the court, some of them at my suggestion. Of the whole number of receivers appointed, I had a personal acquaintance with three. No question has ever been raised, or can be raised, as to the fitness of any of them.

In this connection, I desire to call to your attention the law relating to the appointment of receivers of moneyed corporations, and to the constructions which the courts have placed upon the duties of the Attorney-General in relation thereto.

Sections 17 and 18 of the Banking Law contain these provisions:

"If, from any such examination or report, the Superintendent shall have reason to conclude that any such bank or individual banker is in an unsound or unsafe condition to do banking business, he may *forthwith take possession* of such bank or individual banker's property and business and retain such possession until the termination of the action or proceeding instituted by the Attorney-General." (Banking Law, Sec. 17.)

"Whenever it shall appear to the Superintendent that it is unsafe and inexpedient for such corporation or banker to continue business, he *shall* communicate the facts to the Attorney-General, who *shall* thereupon institute such proceedings against the corporation or banker as are authorized in the case of insolvent corporations or such other proceedings as the nature of the case may require." (Banking Law, Sec. 18.)

It is provided by section 1785 of the Code of Civil Procedure that, "an action to procure a judgment dissolving a corporation created by or under the laws of the State and forfeiting its corporate rights, privileges and franchises may be maintained as described in the next section: * * *

4. If it has banking powers or power to make loans on pledges or deposits, or to make insurances, where it becomes in-

solvent or unable to pay its debts, or has violated any provision of the act by or under which it was incorporated, or of any other act binding upon it." The next section, 1786, provides:

"An action specified in the last section may be maintained by the Attorney-General in the name and in behalf of the people."

* * *

Section 1808 provides:

"Where the Attorney-General has good reason to believe that an action can be maintained in behalf of the People of the State, as described in Articles II., III. or IV. of this title (being provisions with reference to dissolution of corporations) *he must bring an action accordingly.*"

Sections 1787 and 1788 provide that injunction may issue and that in such an action the court may "at any stage thereof appoint one or more receivers of the property of the corporation."

Section 1, chapter 60 of the Laws of 1902, provides:

"Whenever the Attorney-General shall commence an action against a monied corporation, upon the information of either the Superintendent of Insurance or the Superintendent of Banks for the dissolution or sequestration of the property or annulment of the charter of a corporation formed under or subject to the Banking or Insurance Law, and shall be satisfied that it is unsafe and inexpedient for such corporation to continue doing business, the Supreme Court may, on his application, in a case provided by law, appoint a receiver thereof, and may, on such appointment, grant an injunction restraining such corporation from carrying on its business until the further order of the court. The court may, in its discretion, dispense with notice of the application."

In the case of *The People v. The Co-operative Bank*, 53 App. Div. 295, the court held in construing section 18 of the Banking Law that "it is quite clear from the report of the Superintendent to the Attorney-General that the manner of conducting the business was such that it was unsafe and inexpedient to permit the corporation to longer continue in business, and that, therefore, the condition existed which required the Attorney-General, under section 18 of the Banking Law, to take such steps as are authorized to be taken against insolvent corporations. This proceeding is provided for in sections 1785 and 1786 of the Code of Civil

Procedure. By the former section, when a corporation is insolvent, an action may be brought to procure a judgment dissolving it, and by section 1786 this action is to be brought by the Attorney-General in the name and on the behalf of the people. *It is not left to the discretion of the Attorney-General whether he shall bring the action or not, but, by section 1808, it is made the absolute duty of the Attorney-General, when the conditions exist, to cause it to be begun, or, as the section says, 'he must bring an action accordingly.'* When the Superintendent of Banks has reported to the Attorney-General that, in his judgment, it is unsafe and inexpedient for any corporation within his jurisdiction to longer continue in business, it is made the absolute duty of the Attorney-General to bring an action to dissolve it in such a proceeding as is prescribed by sections 1785 and 1786 of the Code of Civil Procedure. As the duty to bring the action is absolute, it follows that he cannot be compelled to wait until someone has seen fit, in the capacity of a relator, to make a complaint to him, to set him in motion. Such is the necessary result of the provisions of the statute. There are no cases which construe the law otherwise."

Under the laws as above quoted, it became the duty of the Attorney-General to commence the action. No other course was open to him.

The Legislature has conferred by law upon the Attorney-General the duty, when he "has good reason to believe that an action can be maintained," to bring an action for the dissolution of a moneyed corporation, and has vested in him the discretion to say where such action shall be brought, and whether an application for the appointment of a receiver shall be upon or without notice, and until the Legislature shall change the law regulating the practice and procedure for the dissolution of corporations, the Attorney-General, now, or in the future, should follow the plain letter and spirit of the law, as it now stands, in all actions of this character which it may be necessary to bring, and submit all such actions for the determination of the courts in such jurisdiction as he deems advisable, regardless of the opinions or criticism of those whom such actions may displease.

The Twelfth Ward Bank, the Terminal Bank and the United States Exchange Bank did present plans to the Superintendent of Banks for the resumption of business which met with his approval, and upon his report to the Attorney-General of his approval of such plans, and that in his opinion, it was then safe and expedient for such banks to resume business, I concurred in his opinion, and such banks were permitted to reopen and are now doing business.

ACTIONS TO TEST TITLES TO PUBLIC OFFICES.

The People of the State of New York v. George B. McClellan and William Randolph Hearst.

As Attorney-General I am prosecuting, in the name of the People of the State of New York, an action against George B. McClellan to oust him from the office of mayor of the city of New York, upon the ground that he has usurped the office, not having been elected thereto by the greatest number of votes cast at the election of 1905. In my judgment no more important case than this, either civil or criminal, is pending trial in the courts of our State. The case goes to the very fundamentals of our system of popular government, involving as it does the primary right of citizens to have their votes honestly counted, truly declared and given their full legal effect.

Frauds, thefts and usurpations in respect to the elective franchise cannot be tolerated if free and honest government is to endure. Public office belongs to the people rather than to the individual. An attack upon the integrity of the franchise in New York city, or in any other locality should be promptly and vigorously resented, not alone by individual candidates for office, who may be personally affected, but by the State.

I began the action in the name of the People of the State of New York v. George B. McClellan immediately after I assumed the office of Attorney-General. For a year prior thereto an unsuccessful contest had been waged in the courts by Mr. William Randolph Hearst to procure a recount of the vote challenged by him on the ground of fraud.

After a contest, four ballot boxes were opened in the Supreme Court on December 1, 1905, and in three of the four boxes the recount proved that there had been a fraudulent declaration of the result.

In the Eleventh Election district of the First Assembly district Mr. Hearst was shown to have been defrauded of seven ballots in the actual tally of the ballots as they lay in the box, irrespective of whether they were legally or illegally marked, three more votes having been accredited to Mr. McClellan than was shown on the ballots and four less accredited to Mr. Hearst than were shown on the ballots.

In the Sixth Election district of the Second Assembly district the recount showed that Mr. Hearst had been defrauded of four votes on the actual count of the ballots as they lay in the box, and two ballots that were marked for Mr. Hearst had been accredited to Mr. McClellan.

In the Third Election district of the Fourth Assembly district the recount showed that Mr. Hearst had been defrauded of six votes on the actual count of the ballots as they laid in the box, irrespective of whether they were legally or illegally marked, five more ballots having been accredited to Mr. McClellan than there were votes for him and one less vote accredited to Mr. Hearst than there were votes for him in the box.

In the Tenth Election district of the Second Assembly district there were fifty-six illegal and void ballots in the box that had been counted for Mr. McClellan.

Immediately after this recount, and before any more boxes could be opened, Mr. McClellan caused the right to a recount to be tested in the Court of Appeals, and that court decided that, under the Election Law, there was no provision for a recount.

The contest was then transferred to the Legislature and the Judiciary Committee of each branch favorably reported a bill that would cure this serious defect in our Election Law. Upon an opinion, however, by the then Attorney-General that the ballots could be counted in an action of *quo warranto*, the amendment of the Election Law was defeated by recommitting it, and the Legislature adjourned without action.

Immediately thereafter and on April 14, 1906, Mr. Hearst filed a petition for leave to institute an action against Mr. McClellan to try his title to the office of mayor. This was opposed by Mr. McClellan and after a long delay the application was, on June 16, 1906, denied upon the ground that the petitioner had not submitted *prima facie* proof that he was elected, which he could not well do without a recount of the votes.

Then an effort was made on behalf of Mr. McClellan to get permission to destroy the ballots, but this was unsuccessful and the order denying the application was affirmed by the Appellate Division.

On January 1, 1907, Governor Hughes recommended to the Legislature the passage of a recount bill. The bill was passed, providing a simple and expeditious determination of the controversy, but the moment proceedings were begun under it, Mr. McClellan stopped the proceedings with writs of prohibition and assailed the constitutionality of the act in the Court of Appeals.

On the 30th day of December, 1906, I wrote a letter to William R. Hearst stating in effect that as soon as I was inducted into office, I would grant a rehearing before me as Attorney-General of the application theretofore made by Mr. Hearst to Attorney-General Mayer for leave to bring an action in the nature of *quo warranto* to try the title to the office of mayor of the city of New York.

On the 1st day of January, 1907, application was made by William R. Hearst for leave to bring an action in the nature of *quo warranto*, and the applicant filed with the Attorney-General a petition for that purpose, accompanied by numerous affidavits which supplied proof of facts which were referred to in the decision of former Attorney-General Mayer as not having been by legal evidence presented to him.

On the 1st day of January, 1907, after the receipt of said application, I caused to be served upon George B. McClellan and upon Mr. Hearst a notice subscribed by me appointing the 7th day of January, 1907, as the time when, and the Attorney-General's office in the city of Albany, as the place where, I would hear the application for leave to bring said action.

Before the hearing of said application, as provided by said notice, Mr. Justice Fitts granted an order to show cause why a writ of prohibition should not issue forbidding the hearing of the said application of William R. Hearst and staying the proceedings under said notice of the Attorney-General and under said application until the hearing and determination of the motion made by Mr. McClellan for a writ of prohibition.

A return was made to said writ by me and on the return day I appeared and opposed the granting of the writ of prohibition. The motion was submitted, but was not decided by the court until some weeks later, the stay being continued in the meantime.

After the service of the order to show cause why the writ of prohibition should not issue, and deeming that the same only covered and provided for a stay of the hearing and determination of the application of Mr. Hearst to be permitted as relator to bring an action of *quo warranto*, and that it did not stay the Attorney-General from bringing an action upon his own information, I, before the decision of the motion for a writ of prohibition, and on the 3d day of January, 1907, brought this action upon my own information against George B. McClellan to try his title to the office of mayor of the city of New York, whereupon and before the decision of the motion for a writ of prohibition I was served with motion papers by Mr. McClellan to declare me in contempt for having disobeyed the stay of proceedings contained in the order to show cause why a writ of prohibition should not be granted.

Upon the return of said motion I appeared and the motion was argued and submitted. The court did not decide it until some weeks thereafter, when on the same day he denied the motion for a writ of prohibition and the motion to put the Attorney-General in contempt.

The defendant McClellan immediately made a motion returnable in Part I of the Supreme Court, New York county, and obtained an order therein to show cause why the summons and complaint in the *quo warranto* action should not be set aside as unwarranted in law, which order to show cause contained a stay of all proceedings on the part of the plaintiff and extended

the defendant's time to answer until the hearing and determination of said motion, the defendant's time to answer having been previously extended in the orders of the court upon the motions for a writ of prohibition and to put the Attorney-General in contempt.

Upon the return of the last-mentioned motion, I appeared and the motion was argued and denied. From this decision the defendant McClellan took an appeal to the Appellate Division of the First Department and obtained from the Appellate Division a further stay of proceedings and a further extension of time to answer until the hearing and determination of the appeal.

The Appellate Division affirmed the order of the Special Term, from which order of affirmance the defendant appealed to the Court of Appeals. In the meantime the stay of plaintiff's proceedings and extension of time of the defendant McClellan to answer was continued.

I appeared in the Court of Appeals and argued said appeal on behalf of the people and the Court of Appeals affirmed the order of the Appellate Division and of the Special Term.

The defendant McClellan demurred and upon the argument of the demurrer the same was overruled, from which decision the defendant McClellan took an appeal to the Appellate Division, where the judgment of the Special Term was reversed and the demurrer sustained, by which decision William R. Hearst was made a party defendant.

I regarded the question of time as of more importance than the favorable result of an appeal upon the question of making Mr. Hearst a party defendant and I, therefore, served a supplemental or amended complaint making Mr. Hearst a party defendant.

Mr. McClellan opposed this motion, although the absence of Mr. Hearst as a defendant was the ground of his demurrer.

The defendant did not answer until July 2, 1907, there having been procured by him and in existence at all times from the commencement of the action to that time stays of proceedings and extensions of his time to plead, always against my earnest protest. He then served an answer, containing only a general denial.

On August 12th, Mr. McClellan served an amended answer, and then for the first time I was in a position to move the

case for trial. Having thus lost the opportunity of trying the action before the summer vacation, I moved it for the first Monday in October and claimed a preference.

In October, having waited since the middle of December, Mr. McClellan made a motion requiring me to give a bill of particulars, stating the particular number of ballots miscounted in every election district in the city and containing other requirements which I resisted in court. An order, however, was made requiring the service of such bill of particulars.

On November 1, 1907, the case finally appeared upon the calendar ready to be set down for trial. Over my earnest objections, the case was set over until the January, 1908, call. I immediately prepared a bill of particulars of all the facts called for, so far as my information extended, and the same was served on November, 19, 1907, whereupon the defendant McClellan moved for a further bill of particulars and to preclude the People from giving proof of any facts other than set forth in the bill of particulars which I had served. This motion was denied, from which decision the defendant McClellan took an appeal to the Appellate Division, which reversed the order of the Special Term and prohibited the people from giving evidence of any of the matter not contained in my bill of particulars.

Although not within the purview of this report for the present year I yet desire to say that the Court of Appeals have since reversed said decision and the People are no longer prohibited by said decision from giving any testimony which they otherwise lawfully might give.

This is a partial record of the obstructive tactics employed and the frivolous technicalities raised by Mr. McClellan to put off for a little longer a public inspection of the contents of the ballot boxes. Further dilatory methods will undoubtedly be employed to prevent the examination of the actual result of the mayoralty election in 1905.

It seems incomprehensible that the trial of this action could have been so long delayed, or that any man would desire to continue in the occupancy of an office the title to which is in question; but the time is near at hand when this action will be tried, and I shall continue, as heretofore, to press this case and procure

a judgment of the court that shall determine who is the lawful mayor of New York city.

The People of the State of New York, plaintiffs, vs. John F. Ahearn, defendant.

On November 7, 1905, the defendant in the above action, John F. Ahearn, was elected president of the borough of Manhattan, city of New York, for the term of four years, commencing January 1, 1906. On July 25, 1907, charges were preferred against him to the Governor, whereby he was charged with misconduct and neglect of duty in office. On December 9, 1907, the Governor, after hearing him in his defense, found him guilty of misconduct in office and removed him therefrom. On December 19, 1907, a majority of the members of the board of aldermen of the city of New York, then in office, representing the borough of Manhattan, voted for the defendant to be president of the borough to fill the vacancy caused by his removal from the office of president, and on the same day the defendant entered into possession of the office and still retains possession thereof.

On December 23, 1907, I commenced this action, which is an action in *quo warranto*, brought pursuant to section 1948 of the Code of Civil Procedure, to obtain judgment that the defendant is guilty of usurping the office of borough president and ousting him therefrom, and a copy of the summons and complaint was served on the defendant on that day.

LITIGATIONS RELATING TO PUBLIC SERVICE CORPORATIONS.

The People of the State of New York, plaintiff, vs. Consolidated Gas Company of New York, defendant.

The Special Master, in his report, filed on the 24th day of June, 1907, in the "Eighty-Cent Gas Case," found the company's "franchise and good will" to be of the value of \$20,000,000, and held them to be property upon which the company was entitled to earn a return. Answering the contention of the Attorney-General and the State Commission of Gas and

Electricity, that certain of these franchises had expired by limitation expressed in the grant, the Master said:

“Whatever may be the defects in these franchises, the fact remains that complainant has their full use and enjoyment to-day, and no evidence whatever appears in the case that the right to exercise them has been attacked or even questioned by either State or municipal authorities.”

Moreover, the Joint Committee of the Senate and Assembly, appointed pursuant to joint resolution, adopted March 6, 1905, to “investigate the gas and electric light situation in the city of New York,” had reported to the Senate and Assembly, on May 3, 1905, as follows:

“It is doubtful whether the Consolidated Gas Company has any extensive rights in the city of New York. It appears that no franchise, other than the franchise to be a corporation, has been granted to the Consolidated Gas Company, and it would seem that several of the grants to the constituent companies have expired or will soon expire.”

At the time of the Special Master's report, the State court had not yet passed upon my application to commence an action to vacate the charter and annul the corporate life of the gas company, which I had expected would be immediately granted; but, upon receipt of that report, allowing the company a return of \$20,000,000 upon its franchises, whether valid or invalid, because their invalidity had never been challenged by the State authorities, I felt compelled to wait no further for the permission of the court, but to take such action as the law allowed me to take without such permission.

Therefore, on the 11th day of July, 1907, I commenced an action in the name of the People of the State against the Consolidated Gas Company of New York, asking for judgment that five of the franchises of the company, which it is now exercising, have expired and are not conferred by law upon the company; and for judgment that two other of the franchises obtained by it from its constituent companies are not held and owned by the

company and are not conferred by law upon it, and for the further relief of a judgment ousting the company from the exercise thereof. The franchises referred to above constitute all of the franchises of the company except its franchise to be a corporation. This action is pending.

**In the Matter of the Application of the Attorney-General
of the State of New York for leave to commence an
action against the Consolidated Gas Company of New
York.**

The Consolidated Gas Company of New York refusing to obey the orders of the Legislature and of the State Commission of Gas and Electricity in the reduction of its prices, upon the pretended grounds that such orders would work a confiscation of its property, and it appearing that the litigation in the Federal court would be of some length, I determined that the State courts should be invoked to determine the legal status of this corporation.

Accordingly, before the Special Master had filed his report in the "Eighty-Cent Gas Case," and on the 24th day of May, 1907, I made an application to the Supreme Court, New York county, for leave to commence an action, under sections 1797-1799 of the Code of Civil Procedure, to obtain judgment vacating the charter and annulling the corporate life of the Consolidated Gas Company of New York upon the grounds: (1) That it has violated provisions of law whereby it has forfeited its charter and become liable to be dissolved by the abuse of its corporate powers, and (2) that it has exercised corporate franchises not conferred upon it by law.

The first charge was based upon the allegation that the company, during the period from 1901 to 1905, purchased a controlling interest in the stock of gas and electric companies in the boroughs of Manhattan and the Bronx, in the city of New York, for the purpose, and with the effect, of creating a monopoly therein of gas and electricity, in violation of section 7 of the Stock Corporation Law and of the Anti-Trust Act.

The second charge was based upon the allegation that the company is exercising franchises of its constituent companies which have expired by express limitations contained in the several grants, and that it is exercising pretended franchises of constituent companies, which it does not own, and has no legal right to exercise.

Upon my application an order was issued directing the company to show cause at Special Term, Part I, on the 28th day of May, 1907, why the leave prayed for should not be granted. On the return day the hearing was adjourned, upon the application of the company, to June 3, 1907, on which latter date argument was had and the motion taken under advisement by the court. On July 30, 1907, Mr. Justice McCall handed down an opinion denying my petition. From the order entered thereon I have taken an appeal, which is now pending.

**In the Matter of the Application of Alan C. Forbes, Mayor of
Syracuse, vs. The Syracuse Lighting Company and The
Syracuse Gas Company.**

In October, 1905, the mayor of Syracuse filed with the State Commission of Gas and Electricity, a complaint pursuant to the provisions of section 15 of chapter 737, Laws of 1905, against the Syracuse Lighting Company and the Syracuse Gas Company, by which the Commission was asked to investigate the plant owned by, and methods used by said companies in manufacturing and supplying gas and electricity to the city of Syracuse and the inhabitants thereof, and after such investigation to fix the maximum prices for gas and electricity which might properly be charged by these companies in said city and to order such improvements in the manufacture and supply of such commodities as in the judgment of the Commission were necessary. The investigation called for by said complaint was held, and on September 5, 1906, an order was made by the Commission fixing the maximum prices of gas and electricity in the city of Syracuse at rates less than those formerly charged by these companies, also determining the quality of the gas and electricity to be supplied and recommending improvements in the service.

On September 14, 1906, appeals were taken by the companies from this order, and in said appeals the powers of the Commission and the legality of its decision were challenged, and also the constitutionality of the law, chapter 737, Laws of 1905, under which this Commission was created.

On October 19, 1906, an order was made by the Appellate Division of the Supreme Court, Fourth Department, staying the

enforcement of the order of the Commission until after the decisions of said appeals. Extensions of time within which to make and serve the cases on appeal were granted to the companies at various times.

As soon after taking office as I became informed concerning this litigation, I determined to take personal charge, and on February 22, 1907, directed that the papers on appeal be transmitted to the Albany office from the special counsel engaged by my predecessor, which was done. Shortly thereafter the companies notified me of their willingness to abandon the appeals, and on March 15, 1907, pursuant to a stipulation between the attorneys for the companies and myself, an order was made discontinuing such appeals.

The order of the Commission has since been in full force and effect. The people of Syracuse have had returned to them the excess payments made since the date of the order of the Commission and have since enjoyed the benefit of the reduced rates.

In the Matter of the Complaint of the Trustees of the Village of Saratoga Springs vs. Saratoga Gas, Electric Light and Power Company.

The defendant company appealed from an order made by the State Commission of Gas and Electricity reducing, on the petition of the village, the price of gas and electricity in the village of Saratoga Springs.

In connection with the appeal the company sought, by a preliminary motion at Special Term, and afterward in the Appellate Division, to prevent the operation of the order reducing the price of gas until the final determination of the appeal. These motions were successfully opposed by this Department. This Department also appeared on the argument in the Appellate Division to sustain the order reducing prices. The Appellate Division affirmed that order and held that the statute creating the Commission was constitutional and that the order made violated none of the constitutional rights of the company. An appeal was taken by the company to the Court of Appeals. Meanwhile the order reducing the price of gas and electricity continued in operation as it had been since the 1st day of September, 1907.

**The People of the State of New York vs. The New York City
Railway Company.**

This is an action brought to procure the dissolution of the defendant railway company and the forfeiture of its franchises, on the ground that it has remained insolvent for more than one year.

The action was begun on the 30th day of September, 1907, and simultaneously with its commencement, an order to show cause was procured why temporary receivers of the property and assets of the defendant company should not be appointed. This motion was strenuously opposed, and voluminous briefs were prepared and filed by each side.

On the 29th day of November, the Supreme Court granted the Attorney-General's motion and appointed temporary receivers, who qualified the same day and have been in office ever since.

The defendant has interposed an answer, denying the material allegations of the complaint, and the case will be moved for trial at the February term, 1908, and it is expected to be tried at the commencement of that term.

In the meantime, an order for the examination of the defendant before trial has been procured, and a motion is now pending to vacate this order.

**The People of the State of New York vs. Daniel B. Has-
brouck et al. and Metropolitan Street Railway Company.**

This is an action brought by the Attorney-General against the Metropolitan Street Railway Company and its individual directors, to make the individual directors account to the defendant for their official conduct, and for their alleged mismanagement and waste of the assets of the defendant.

The action was begun on the 30th day of September, 1907, and simultaneously with the commencement, an order to show cause was procured, why temporary receivers of the property of the Metropolitan Street Railway Company should not be appointed. The motion was strenuously opposed, and voluminous briefs were prepared and handed to the court.

On the 29th day of November, 1907, the Attorney-General's motion was granted. Temporary receivers have been appointed, and have acted as such ever since. Of the individual defendants, six have been served and the others will be served in the course of a few days. The six individual defendants have secured extensions of time to answer, and as soon as the action is at issue, it will be noticed and pressed for trial.

In both of the above actions, the Attorney-General has been in conference with the receivers appointed by the Supreme Court, and has assisted and advised them, and such receivers are about to apply to the United States Circuit Court for an order vacating a receivership which has previously been granted in that court, and directing the receivers appointed by the United States Circuit Court to relinquish control of the property of the railway company, and to transfer possession of it to the State Court receivers.

In the Matter of the Application of the Attorney-General for leave to commence an action against the Interborough-Metropolitan Company.

On the 9th day of July, 1907, Mr. Justice Holt, of the United States Circuit Court, Southern District of New York (*Burrows v. Interborough-Metropolitan Company et al.*, 156 Fed. Rep. 389, 392), held concerning this company:

"But on the facts alleged in the bill, which the demurrer admits, it is difficult to see how the monopoly shown by them could be more complete. By it every surface street railroad in the boroughs of Manhattan and the Bronx are combined in one management and control. No one can go up or down town in New York without using one of these roads unless he takes a carriage or walks. It is as absolute a monopoly of the means of transportation of passengers in New York as can be imagined which is not legally exclusive."

Relying upon this decision, on the 11th day of July, 1907, I made an application to the Supreme Court, New York county, under sections 1797-1799 of the Code of Civil Procedure, for

leave to commence an action to vacate the charter and annul the corporate existence of this corporation, upon the grounds:

(1) That it had offended against the provisions of the act under and by which it was created. (2) That it had violated provisions of law whereby it has forfeited its charter and become liable to be dissolved by the abuse of its corporate powers.

The allegations of fact upon which the foregoing charges were predicated are as follows: That a conspiracy was formed by certain individuals to suppress competition, create a monopoly and unite under one control all the trade and business of transporting passengers within and through the boroughs of Manhattan and the Bronx, in the city of New York. That, in pursuance of such conspiracy, the Interborough-Metropolitan Company was organized under the Business Corporations Law of the State of New York, with the intent and for the purpose of acquiring in exchange for its own capital stock and collateral trust gold bonds, a controlling interest in the capital stock of companies which then controlled all the transportation facilities in said boroughs. That the Interborough-Metropolitan Company, having been so organized, did acquire a controlling interest in the capital stock of such transportation companies and thereby created a monopoly of, and suppressed competition in, the business of transporting passengers by urban railway in such boroughs, in violation of section 7 of the Stock Corporation Law.

An order was issued directing the company to show cause on the 19th day of July, 1907, why the leave prayed for should not be granted. On July 19, 1907, hearing upon the application was adjourned until July 27, 1907, and readjourned upon the application of the company, to July 30, 1907. On July 30, 1907, the motion was argued before Mr. Justice Hendrick, who denied my petition, on the 13th day of September, 1907, in the following opinion (56 Misc. 128):

“ There is no substantial issue of fact on this application, nor is any attempt made, either in the answer or in the answering affidavits, to deny the material allegations of the petition. The questions to be decided are entirely questions of law, and those questions of law have been very recently

decided by Mr. Justice McCall in this part of the court in the 'Matter of the Application of the Attorney-General for leave to commence an action against the Consolidated Gas Company of New York,' 56 Misc. Rep. 49. The opinion in that matter is in sharp conflict with the opinion recently handed down by Mr. Justice Holt in the action, *Burrows v. Interborough-Metropolitan Company*, U. S. C. C., Southern District of New York, not reported. The construction of statutes of this State by the Supreme Court of this State should be followed by a justice sitting at Special Term rather than that of foreign tribunal of similar jurisdiction. Indeed, the United States courts ordinarily follow the construction of the State statutes enunciated by the courts of the state in which the statutes were enacted.

"I am urged by the learned Attorney-General to disregard the opinion of Mr. Justice McCall, *supra*, and also to ignore the decision of the Appellate Division in this Department in the case of *Rafferty v. Buffalo City Gas Company*, 37 App. Div. 618, and to follow the opinion of Mr. Justice Holt, *supra*. I think, however, that the decision of the Supreme Court of this State upon a given question of law should be followed by courts of equal jurisdiction to the end that, without confusion, the question involved may be definitely settled by the Appellate tribunals. This is especially true where the decision is not clearly erroneous. (*Peel v. Elliott*, 16 How. Pr. 484; *Bentley & Buruton v. Goodwin*, 38 Barb. 633-640; *Loring v. United States U. G. P. C.*, 30 id. 644; *Celluloid Mfg. Co. v. Zylonite Co.*, 27 Fed. Rep. 295; *Mayor v. Conover*, 5 Abb. Pr. 171, 178.) In *Peel v. Elliott*, *supra*, the court says: 'As this point seems to have been partially considered by one of my brethren, I do not feel at liberty to review that decision on this occasion; and as it is a novel and important question, I deem it most judicious to deny the motion to discharge from arrest, to the end that the judgment of the General Term may be taken on the points presented.' This ruling was made in a case where the point involved has been only partially considered by one justice. Certainly the rule is of much greater

force in this case, where the questions of law involved have, by another justice of this court, been very fully considered and determined within a very recent period. In conformity with the opinion of Mr. Justice McCall, *supra*, the motion is denied."

From the order entered upon that motion, I have taken an appeal which is pending.

ANTI-TRUST LITIGATION.

The People of the State of New York, plaintiff, vs. American Ice Company, defendant.

This action was commenced by my predecessor in office on December 19, 1906. It was brought under chapter 690 of the Laws of 1899, to obtain a judgment annulling certain agreements alleged to be unlawful and perpetually enjoining the American Ice Company from carrying out the agreements, scheme and arrangement complained of. The answer was filed on the 9th day of January, 1907.

When I entered the office, I was unable to find in the office files any memorandum whatever relating to the evidence upon which the complaint was based. I immediately caused an investigation to be made, and discovered that the report of the expert, who had examined the records of the American Ice Company, and upon whose report the action was commenced, had been taken from the desk of my predecessor in office at the Capitol, in the month of December, 1906. I obtained from the expert a copy of the missing report, but he could not furnish me copies of exhibits which had been attached to the original report. These exhibits consisted of copies of contracts which were alleged to be in violation of law and which were substantially the basis of action which my predecessor had commenced. Accordingly I was compelled to apply for an order to re-examine the records, books and correspondence of the defendant company.

A petition for the inspection and discovery of such records, books, etc., was presented to the Supreme Court, New York county, on the 14th day of February, 1907, and was opposed

by the defendant. On the 17th day of April, 1907, an order was entered granting my petition. On the 23d day of April, 1907, the defendant served its notice of appeal from that order, and on the 24th day of May, 1907, argument upon the appeal was heard in the Appellate Division. On the 7th day of June, 1907, the order of the Supreme Court at Special Term was affirmed by the Appellate Division, with a slight modification.

I immediately assigned experts to the work of re-examining the records, books and correspondence of the company and of taking copies of the same, in so far as they were pertinent to the case. This re-examination was concluded with satisfactory results.

On the 21st day of September, 1907, I sent to the District Attorney of New York county copies of the contracts, correspondence and other data so obtained, for such action against the defendant company as might appear to him proper, advising him that, in my judgment, the matter forwarded to him constituted proof of the violation by the company of the laws of this State prohibitive of monopoly.

The People of the State of New York, plaintiffs, vs. The American Telephone & Telegraph Co., The New Jersey Title Guarantee & Trust Co., Security Trust Co. of Rochester, George Eastman, Hiram W. Sibley, James S. Watson, Walter B. Duffy, Thomas W. Finucane and Edward Bausch.

Early in the month of February, 1907, complaints were received at the office of the Attorney-General that the United States Independent Telephone Company, by and through a committee representing holders of large amounts of outstanding stock and bonds, had entered into an agreement with a "trust company of high standing" for the sale of something like 90 per cent. of the stock and bonds of the company.

I had reason to believe from the information presented that this "trust company of high standing" was actually acting as the agent of the American Telephone and Telegraph Company, familiarly known as "The Bell," and that the latter company was seeking to create a monopoly in the telephone business in the State of New York, The United States Independent Tele-

phone Company at that time owning or controlling the local telephone companies operating independently of and in competition with the local Bell Telephone companies in the cities of Rochester, Jamestown, Utica, Herkimer, Syracuse, and other intermediate places.

The United States Independent Telephone Company also owned the Stromberg-Carlson Telephone Manufacturing Company, which is the most important concern engaged in manufacturing telephone instruments and supplies for independent telephone companies in the State of New York, if not in the United States.

The acquisition and control of this company and its subsidiary companies by "The Bell," therefore, clearly meant the practical monopolization of the telephone business by the Bell Company in the State of New York.

Therefore, on the 27th day of February, 1907, I made an application to the Supreme Court, Albany county, in accordance with the provisions of chapter 690 of the Laws of 1899, for the appointment of a referee and for an injunction order restraining the defendants mentioned in the application from doing any act, directly or indirectly, by which the ownership or control of the United States Independent Telephone Company through the purchase of its stock or bonds, or otherwise, might be acquired by the American Telephone and Telegraph Company, until the institution and termination of an action or proceeding which I determined to commence for the purpose of permanently restraining the consummation of the proposed sale and acquisition. Mr. Justice Fitts appointed Hon. Joseph A. Lawson, of Albany, referee and granted the injunction.

At the hearings before the referee the American Telephone and Telegraph Company appeared and admitted that the "well-known trust company" was The New Jersey Title, Guaranty & Trust Company, and that it was in fact the agent and representative of the American Telephone and Telegraph Company in acquiring the stock and bonds of the United States Independent Telephone Company and its subsidiary companies, and that an agreement to that end had actually been entered into between the American Telephone and Telegraph Company, through this trust

company and the United States Independent Telephone Company, by and through the agents and representatives of the stock and bond holders of the latter company.

Following the determination of the hearings and on the 10th day of April, 1907, I verified a complaint against the defendants, containing in substance the facts alleged in the original application, and ascertained upon the hearings, which were in effect that the contracts entered into between and among the several defendants constituted a scheme, agreement, arrangement and combination upon their part to effect the transfer, ownership and control of the United States Independent Telephone Company, its branches and subsidiary companies, by the American Telephone & Telegraph Company (the "Bell") and that such contract and agreement constituted an attempt to create a monopoly in the telephone business in the State of New York, in violation of its laws, and especially in violation of chapter 690 of the Laws of 1899.

Mr. Justice Betts on the 10th day of April, 1907, granted an injunction restraining the defendants from doing any act in, toward or for the making or consummation of the proposed agreement and combination, which injunction is still in effect.

The proposed agreement was practically abandoned as soon as the action was commenced by the Attorney-General and up to the present time the public has enjoyed the privilege of telephone competition.

In the Matter of the Petition of the Lockport Light, Heat & Power Company, for a certificate of authority permitting it to exercise its powers and transact the business set forth in the certificate of incorporation;

In the Matter of the Petition of the Lockport Light, Heat & Power Company, for permission to execute a mortgage to secure an issue of \$600,000, five per cent., thirty-year gold bonds;

In the Matter of the Petition of the Lockport Gas and Electric Light Company, for permission to transfer its franchise and property to the Lockport Light, Heat & Power Company, and

In the Matter of the Petition of the Economy Light, Fuel & Power Company, for permission to transfer its franchises and property to the Lockport Light, Heat & Power Company.

The Lockport Light, Heat and Power Company applied for permission to take over the property, franchises and business of the Lockport Gas and Electric Light Company and the Economy Light, Fuel and Power Company, two corporations engaged in furnishing gas, electric light, heat and power to the city of Lockport and the inhabitants thereof. The application was opposed by a committee appointed by the mayor of the city of Lockport, pursuant to a resolution passed by the common council of that city. The Attorney-General appeared in opposition to the application upon the ground that the proceeding contemplated the formation of a monopoly in contravention of the laws of the State. The two companies, the merger of which was sought by this proceeding, were the only companies engaged in the city of Lockport in furnishing gas, electric light, heat and power.

The application was granted by the Public Service Commission, which held that said consolidation did not create a monopoly.

In the Matter of the Petition of William S. Jackson, Attorney-General of the State of New York, for an order directing Clarence H. Mackey and others to appear before a referee for examination; pursuant to chapter 690 of the Laws of 1899.

The Western Union Telegraph Company and the Postal Telegraph & Cable Company for a long time have been engaged in this State, apparently as competitors, in the business of transmitting messages by electric telegraph. On or about the 1st day of January, 1907, said companies simultaneously published new and identical schedules increasing their charges for the transmission of messages from the city of New York to other points in the State of New York and the United States. I made an investigation and was convinced from the character of the published tariffs and other evidence secured that these companies, while apparently acting as competitors, were operating under an understanding as to the rate of charge for the service which they

rendered and, in some instances, under agreements for the division of territory, or for a division of the proceeds of their joint business.

Believing that the books and minutes of the companies would show conclusively that this was such a combination as fell directly within the prohibition of the statute, I sought to examine the officers of the companies under the provisions of chapter 690 of the Laws of 1899, which expressly provides for that method of discovery and which had been invoked successfully by me to prevent the consummation of the telephone monopoly.

On July 8, 1907, I obtained an order from a justice of the Supreme Court, New York county, requiring the officers and directors of both companies to appear and produce their books before a referee. Before further procedure could be had and on July 12, 1907, an order was obtained by the company from another justice of that court restraining me from proceeding with the examination and requiring me to show cause why the order permitting the examination should not be set aside.

The hearing upon the motion to vacate was adjourned until July 30, 1907, on which date the motion was argued and taken under advisement by Mr. Justice Hendrick.

No decision was rendered and meanwhile the Attorney-General was stayed by court order.

In the Matter of the Application of the Attorney-General for leave to commence an action against the Postal Telegraph-Cable Company.

In the Matter of the Application of the Attorney-General for leave to commence an action against the Western Union Telegraph Company.

Having investigated and secured evidence that the Western Union Telegraph Company and the Postal Telegraph-Cable Company, domestic corporations, had combined, for the purpose and with the effect of creating a monopoly within this State of the business of transmitting messages by electric telegraph, and that, exercising the power of such monopoly, they had published and put in operation identical schedules of charges, whereby rates for the transmission of messages within this State, and from

this State to other points in the United States, had been largely increased, I deemed it my duty to commence actions against such companies to obtain judgments vacating their charters and annulling their corporate lives upon the ground that they had violated provisions of law whereby they had forfeited their charters and had become liable to be dissolved by the abuse of their corporate powers.

On the 1st day of October, 1907, I presented petitions to the Supreme Court, New York county, pursuant to sections 1797-1799 of the Code of Civil Procedure, for leave to commence such actions, and an order was issued directing the companies to show cause why the prayers of the petitions should not be granted. On the 11th day of October, 1907, argument upon the applications was heard at Special Term, Part I, by Mr. Justice McCall, who reserved decision.

MISCELLANEOUS ACTIONS.

People ex rel. Sherill et al. vs. O'Brien.

This proceeding was instituted to review the constitutionality of the legislative apportionment enacted in 1906. My predecessor was of the opinion that the act was valid but in that view I was unable to concur. When the question first reached the Court of Appeals in October, 1906, that court did not pass on the merits of the case for the reason that the record in the Appellate Division did not show that it had been disposed of there on the law only and not as a matter of discretion. After a correction of the record in that respect, an appeal to the Court of Appeals was again taken by relators. A motion was then made by my predecessor to dismiss that appeal and that motion was pending when I took office. Believing that public interest required that the case should be passed on by our highest court, I withdrew the motion to dismiss the new appeal.

Having determined to take the position above indicated, I invited my predecessor to participate in the argument so that the court might have the benefit of his views and the invitation was accepted.

The case was argued in the Court of Appeals and on April 3, 1907, that court rendered a decision declaring the Apportionment Act of 1906 void.

The People ex rel. Cassidy vs. Whalen, as Secretary of State.

This proceeding by mandamus to compel the issuance of notices of the general election of 1907, omitting the office of Senator in each of the several districts, was occasioned by proposed action on the part of the Secretary of State, on the advice of this Department.

The opinion of the Court of Appeals, in the case of the People ex rel. Sherrill v. O'Brien, as Secretary of State, rendered April 3, 1907, declaring the legislative apportionment on which the present Senate was elected wholly void, left in dispute the question of whether the new Senate should be elected to serve out the current term.

In the view taken by this Department, which assumed the question an open one, a legislative house elected on an unconstitutional apportionment should be superseded by a new house, chosen at the first regular election to occur after the rendering of such judgment. The matter was carried to the Court of Appeals, where, without further discussion by that court, judgment to the contrary was rendered, with opinion by the court, that the point had been disposed of in the April decision.

This ruling presents one consequence especially serious which may follow from an unconstitutional apportionment. Since, in this case, many new Senate districts overlap those for which present Senators were elected, it seems impossible that vacancies therein could be filled, should they arise at any time during the term of the present Senate.

THE CONSTITUTIONAL POWERS OF THE ATTORNEY-GENERAL.

The People of the State of New York vs. Santa Clara Lumber Company.

My attention incidentally was called to the fact that a judgment was entered in the above-entitled action on December 4, 1904, by

which the title of the State of New York to certain lands in Franklin county, and part of the Forest Preserve, which had been owned and in the possession of the State for many years, had been wrongfully and in violation of the provisions of the Constitution and the statutes transferred from the State to the Santa Clara Lumber Company.

The lands in question had been acquired by the State by tax deeds from the Comptroller of the State recorded in April, 1887, and in March, 1891. The State had entered into possession of the lands and the lands were duly recorded in the office of the Comptroller as belonging to the State, and for years had been assessed by the assessors of the town in which they were located as wild lands belonging to the State.

Certiorari proceedings had been brought to review the proceedings of the State Comptroller resulting in the sale of these lands for taxes and the conveyances thereof to the State, which proceedings had been finally dismissed by the judgment of the Court of Appeals, January 30, 1897, and the validity of such tax sales and conveyances to the State confirmed.

Thereafter, one Meigs had brought an action of ejectment against the Comptroller, alleging that he was the owner of said lands, which action was finally dismissed by the judgment of the Court of Appeals granted in April, 1900.

About May 31, 1904, the above-entitled action was brought in the name of the People of the State by the Forest, Fish and Game Commission, to recover the sum of \$2,350 of the defendant for entering upon said lands and cutting down and carrying away 835 cedar trees in June and July, 1903. The complaint alleges that the People of the State are and were the owners of said lands, and was verified by De Witt C. Middleton, then Forest, Fish and Game Commissioner. The answer, on information and belief, denied plaintiff's title, and alleged that Meigs (before mentioned) was the owner of said lands and in possession thereof and had a lawful right to permit the cutting and removal of trees and timber therefrom, and that the defendant had, with the express permission, consent and authority of said Meigs, entered said lands and cut and removed the trees.

Thereafter, Middleton, as Forest, Fish and Game Commissioner, and the attorneys for the defendant signed a stipulation by which it was agreed that the defendant be allowed to take a dismissal of the complaint upon the merits and thereby confirm the title of the lands described in the complaint in "the present holder or holders thereof as against the claim of the State of New York or the People thereof thereto," and that the defendant should convey to the People certain other lands mentioned therein. Judgment was entered in accordance with such stipulation. The People were represented by counsel appointed by the Forest, Fish and Game Commission and not by the Attorney-General, and there was no notice or record whatever of the action in the Attorney-General's office.

Upon discovering these facts, I made a motion to vacate the judgment thus granted upon the stipulation of Forest, Fish and Game Commissioner Middleton, and to have the Attorney-General substituted as the attorney for the plaintiffs in the action and to strike out the defendant's answer and for judgment in favor of the plaintiffs upon the pleadings. The motion was heard before Mr. Justice Van Kirk. The Forest, Fish and Game Commissioner appeared by counsel regularly retained by him and objected to the right of the Attorney-General of the State of New York to act as attorney for the Forest, Fish and Game Commission, and claimed that, by virtue of the Forest, Fish and Game Law, the Commissioner had the sole right to prosecute and defend actions relating to the Forest Preserve, by counsel designated by himself. Justice Van Kirk held that the Attorney-General had no right to prosecute such actions and had no right to make the motion to vacate the judgment in the above action.

The Attorney-General claimed and yet claims that he is the constitutional law officer of the State and that it is and has always been his duty and right to prosecute and defend all actions in the event of which the People are interested. If the contention of the Forest, Fish and Game Commissioner is correct, that the Legislature may by act take from the Attorney-General the right to represent the Forest, Fish and Game Commissioner in any actions that may arise concerning the Forest Preserve, then the Legis-

lature has the right to take away from the Attorney-General any and all powers now exercised by him and to deprive him of all right and authority to represent the People of the State.

I have taken an appeal from the decision of Justice Van Kirk, which will be argued at the next term of the Appellate Division, Third Department, and the case will undoubtedly go to the Court of Appeals and a final determination of the powers and duties of the Attorney-General will be obtained.

The question here involved is of the very highest importance, as affecting not only the office of the Attorney-General, but also all the other constitutional State officers whose powers and duties are defined by the same section of the Constitution.

The People of the State of New York vs. New York, Ontario and Western Railroad Company.

Soon after assuming the duties of my office, my attention was called to an agreement made by the State Board of Special Examiners and Appraisers with the New York, Ontario and Western Railroad Company, for the payment of the sum of \$118,161.66 for lands claimed to have been appropriated by the State for the use of the Barge canal and on account of which contract there had been paid by order of the Canal Board on the 31st day of December, 1906, \$117,161.66

An examination disclosed that the amount agreed to be paid by the State to the New York, Ontario and Western Railroad Company was for the removal of its railroad bridge over Wood creek at Sylvan Beach in Oneida county and the erection of a new bridge at the same point and the changing of the grade of its railroad tracks and making other improvements rendered necessary by the construction of the Barge canal; that the railroad bridge of the defendant had been constructed many years before by the New York and Oswego Midland Railroad Company to which the New York, Ontario and Western Railroad Company succeeded; that Wood creek has always been a natural navigable stream and formerly formed a part of the canal constructed by the Western Inland Lock Navigation Company and also a part of the old Oneida Lake canal; that the rights of both companies were

acquired by the State by purchase; that the bridge which has been constructed by the railroad company had been so constructed without obtaining the permission of the Board of Canal Commissioners as required by the statutes, at the time it was built, and that the legal obligation was upon the railroad to reconstruct its bridge to conform to the requirements of the Barge canal at its own expense; that the lands, which were described in the appropriation map and of which the railroad company claimed to be the owner, belonged to the State and that the moneys agreed to be paid and already paid by the State for the pretended appropriation of such lands were paid without any lawful authority.

I, therefore, made a demand upon the railroad company for the sum of \$117,161.66 so paid to it, and upon its refusal to return same commenced an action against the company to recover the money. The action is now pending and will be brought to trial at the next Trial Term of the Supreme Court to be held in Albany.

TOWN AND COUNTY CO-OPERATIVE FIRE INSURANCE COMPANIES.

The attention of this Department to these companies is still compelled by reason of an increasing number of complaints from policy-holders, and applications to prosecute by actions in the nature of *quo warranto*. Provision for adequate supervision is urgent. No statute requires that the volume of liability undertaken by these companies be officially stated, and I believe the public has had no information thereof. I have examined the reports filed with the Secretary of State for business done during the year ending December 31, 1906, and computed the aggregate of risks. It reached the sum of \$353,683,518, running to policy-holders in the number of 253,842. That liability was undertaken while the companies were under no official supervision in the transaction of business. Such companies may be organized unhindered by necessity for obtaining official consent. The annual reports required to be filed need not reveal the unpaid losses and there is no penalty provided if no reports are filed. The statute authorizing such companies is Article IX of the Insurance Law. That statute undoubtedly contemplated mutual insurance by residents of the same neighborhood likely to be acquainted and entitled to

confidence in each other since they were to insure each other. Yet companies are organized under the statute by residents of large cities who intend to transact business in distant counties to be solicited from property-owners unacquainted with each other or with the managers. Applications may be and often are secured for policies which read like the standard form in use by stock companies and which set forth by-laws omitting any reference to the liability of policy-holders to pay assessments. Such persons, no doubt, assume that this State requires all forms of fire insurance to be carried on under official supervision, and when agreements to pay assessments are not exacted they do not suspect that they may be called on for assessments, having paid a cash premium in advance. The extent of the deception and of unbusinesslike management not only possible but actually practiced and experienced under this statute is a reproach to the State. This form of insurance was first authorized in 1857, but not until recent years has the statute been systematically abused. Active use of the powers of this Department as a substitute for supervision is wholly inadequate. A company may be found doing business on pretenses essentially false and to the profit of a few thrifty officers when the only legal ground on which the Attorney-General can act may consist in the accidental fact that some informality exists in the organization papers or his power may be wholly wanting. It is not uncommon to find that funds absorbed in expenses since organization exceed many times the amounts paid for losses. There is now nothing to prevent managers under a court injunction from organizing another company immediately, nor preventing the same men from conducting a dozen of these companies at once. It is true that many companies are honestly and prudently conducted under this statute. Some organized prior to 1860 are still in operation and realizing the expectations of the members, but those good examples have been lost on many other companies. Adequate legislation will provide for policy forms clearly stating the liability of members to assessments; for reports of business sufficient to indicate the condition of the company; prohibiting the use of deceptive names; reasonable supervision and proper penalties for non-compliance and for future organization of companies depending on some official consent.

ACTIONS TO FORECLOSE LIENS AGAINST THE STATE.

J. J. Newman Lumber Co. vs. J. Cady Wemple et al.

This case, begun in 1906, was the most important of this class disposed of during the year. It involved liens filed for labor and material furnished under a contract for construction of the new buildings for the State Agricultural and Industrial School. The contract was cancelled by the State, after the sum of \$73,000 had been paid thereon and certificates had been issued in addition to the contractors for \$15,000, leaving a balance in the hands of the State of \$8,454. Prior to the issuing of the certificates, liens had been filed by laborers and materialmen. It cost the State \$50,000 to complete the work. All the facts being laid before the Supreme Court upon the trial, the court found that the State had violated the contract on its part and had wrongfully cancelled it and that the State had rendered itself liable to the lienors whose liens were on file at the time payments were made upon the contract. This has been a most unfortunate outcome for the State.

The court was of the opinion that it was worth the sum of \$50,000 to complete the contract. It would thus appear that the contractors had undertaken the work at an inadequate price.

The State, having violated the contract and wrongfully cancelled it, will be without remedy against the contractors' bondsmen. The court has awarded judgment against the State for amounts aggregating about \$25,000, exclusive of costs, all of which will go to pay for labor and material furnished in good faith by the lienors. This Department has deemed that an appeal would be unsuccessful.

SUMMARY OF THE BUSINESS OF THE OFFICE FOR THE YEAR 1907.

Money recovered for the State during the year....	\$29,618 21
Penalties in actions brought to enforce the provisions of the Agricultural Law	\$25,953 07
Costs in said actions.....	2,958 58
All other moneys.....	706 56
	29,618 21

Written opinions furnished during the year (excluding numerous communications, formal and informal)	152
Fidelity, contract, depository and official bonds passed upon	942
Bonds examined pursuant to the provisions of chapter 185, Laws of 1907	417
Abstracts of title referred to the office for examination	738
Number of violations of the Agricultural and Pure Food Laws, referred to this office by the Agricultural Department	1,156
Number of persons indicted for violation of Election Laws	45
Number of <i>certiorari</i> proceedings instituted to review the determination of the State Board of Tax Commissioners	364
Applications to Land Board	102
Mortgage foreclosure suits to which the State is a party	74
Partition actions to which the State is a party	22
Proceedings in Surrogates' Courts to which the State is a party	190
Certificates of incorporation examined	28
<i>Quo warranto</i> proceedings and other similar actions begun	16
Applications for leave to commence actions or other matters upon which a hearing has been had before the Attorney-General or any of the Deputy Attorneys-General	23
Number of claims disposed of in Court of Claims	464
Amount claimed, exclusive of interest	\$812,241.44
Amount awarded	\$103,778.19
Percentage of awards to amount claimed, about	12 $\frac{3}{4}$ %
Number of claims dismissed with no award	128
Amount of claims dismissed	\$436,618.26
Number of claims disposed of in 1907 more than in 1906	110

Number of claims disposed of in excess of number filed	97
Number of cases argued in Court of Appeals dur- ing the year 1907	20
Decided in favor of the State	10
Undecided January 1, 1908	1
Modified	2
Number of cases argued in the Appellate Division	35
Decided in favor of the State	15
Undecided January 1, 1908	6
Modified	2

Further items and particulars are set forth in the schedules herewith presented.

Respectfully submitted,

W. S. JACKSON,
Attorney-General.

COURT OF CLAIMS.

Showing cases pending on appeal in the Court of Appeals and in the Appellate Division from the Court of Claims, those disposed of, and the status of those remaining, with a brief history of each, also list of judgments rendered in the Court of Claims.

COURT OF CLAIMS.

During the year 1907, 367 claims were filed,
representing in the aggregate..... \$1,290,548 85
The number of claims tried and disposed of was 464.
Total amount claimed..... 812,241 44
Total amount awarded..... 103,778 19
Of this number, 128 claims amounting to.... 436,618 26
Were dismissed with no award.
Number of claims pending, 2,325.

IN COURT OF APPEALS.

THE TOWN OF MANLIUS, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim was for \$6,000 for damages to three highway bridges over Limestone creek, in the town of Manlius, Onondaga county, undermined and washed away, caused, as alleged, by the negligence of the State in discharging into said creek water from De Ruyter reservoir.

The case was tried at Syracuse February 26-27, 1901. On November 19, 1901, the court rendered judgment dismissing the claim, and from this judgment the claimant appealed to the Appellate Division, where the judgment of the Court of Claims was sustained. From this judgment an appeal was taken to the Court of Appeals. The case on appeal has not yet been served.

EDWARD R. BARTOW, AN INFANT, BY EDWARD H. BARTOW, GUARDIAN, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This is an appeal to the Court of Appeals from a judgment of the Appellate Division, sustaining a judgment of dismissal of the Court of Claims. The claim was filed to recover \$10,000 for the shooting of claimant's son, as was alleged, by a member of the National Guard, while practicing marksmanship at Creedmoor, Queens county. This appeal was argued January 22, 1901, in the Court of Appeals. The appeal was dismissed by this Court, but Judge Cullen since signed an order allowing the appeal to stand.

THE F. H. MILLS COMPANY, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim was filed for \$137,247, for damages arising upon a contract between claimant's assignors and the board of man-

agers of the New York State Reformatory at Elmira, by which they were to carry on a cabinet shop at the reformatory, and employ the labor of inmates of such reformatory on the piece-price plan. It is alleged by the claimant that the State did not comply with the terms of the contract in that it did not furnish a sufficient number of men to carry on the work, and for other reasons stated in the claim. After several hearings the Court of Claims rendered its decision in April, 1901, dismissing the claim. From this judgment the claimant appealed to the Appellate Division. The Appellate Division sustained the judgment of the Court of Claims, and claimant appealed to the Court of Appeals. The appeal was argued January 16-17, 1907, and the judgment of the lower courts sustained by the Court of Appeals.

WILLIAM B. FREER, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim, for the sum of \$11,695 for damage to lands, premises and crops in the towns of Dix and Montour Falls, Schuyler county, by overflow from the Chemung canal, was filed December 31, 1902, and was tried at Elmira, May 25, 1903. A judgment in favor of the State was rendered January 19, 1905, and from this judgment claimant appealed to the Appellate Division. The Appellate Division affirmed the judgment of the Court of Claims. Claimant has appealed to the Court of Appeals.

ANTHONY SPENCER, RESPONDENT, *vs.* THE STATE OF NEW YORK, APPELLANT.

This claim was filed for the sum of \$867.50 damages for personal injuries sustained while at work on a bridge over the Erie canal in the city of Rochester. The claim was tried at Rochester, February 13, 1905. Judgment was rendered in favor of the claimant for the sum of \$416, and from this judgment the State

appealed. The Appellate Division sustained the judgment of the Court of Claims. The State appealed to the Court of Appeals, which court sustained the judgment of the lower courts.

HATTIE ADKINSON, RESPONDENT, vs. THE STATE OF NEW YORK, APPELLANT.

This claim was filed November 22, 1901, for \$1,142 for damages to land and crops in Brutus, Cayuga county, by overflow from the Erie canal. The case was tried at Syracuse, May 22, 1905, and judgment for \$500 rendered in favor of the claimant. From this judgment the State appealed to the Appellate Division. The Appellate Division affirmed the judgment of the Court of Claims. The State appealed to the Court of Appeals. The judgment of the lower courts was affirmed by the Court of Appeals.

THE CITY OF BUFFALO, APPELLANT, vs. THE STATE OF NEW YORK, RESPONDENT.

This claim was filed for the sum of \$30,000 for local assessments and improvements levied by the city of Buffalo, upon the property of the State of New York, situate within said city. The case was tried May 22, 1903. A judgment was rendered against the State for \$133.62, with interest, amounting in all to the sum of \$154.58. From this judgment the city appealed to the Appellate Division. The case was argued in the Appellate Division November 15, 1906. The Appellate Division affirmed the judgment of the Court of Claims. The claimant has appealed to the Court of Appeals. The appeal has not been argued.

WILLIAM W. WHEELER, RESPONDENT, vs. THE STATE OF NEW YORK, APPELLANT.

This claim, for the sum of \$3,969.02, and interest for damages sustained by the appellant in consequence of the cancellation, annulling and setting aside of letters-patent, executed to

him by the State of New York, so far as the same relate to the east half of Lot 87, Township 8, Old Military Tract, town of Belmont, Franklin county, N. Y., was filed with the Court of Claims on November 7, 1900. The claim was tried November 18, 1903, and judgment rendered dismissing the claim. From this judgment an appeal was taken to the Appellate Division. The Appellate Division reversed the judgment of the Court of Claims and ordered a new trial. The case was retried April 24, 1906. On June 18, 1906, the Court of Claims rendered a judgment for the sum of \$4,713.72, with interest thereon from April 24, 1906, amounting in all to the sum of \$4,756.14. The State appealed to the Appellate Division. The Appellate Division affirmed the judgment of the Court of Claims, and the State again appealed to the Court of Appeals, which court reversed the lower courts and granted a new trial, unless the respondent within twenty days agrees to accept the sum of \$2,691.42, in which case the judgment as reduced is affirmed, without costs to either party.

MYER NUSSEBAUM, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.

This claim for the sum of \$12,000 was filed for services as attorney to the committee of the Assembly on privileges and elections. The claim was dismissed on motion of the Attorney-General on February 14, 1907. The claimant appealed to the Appellate Division, and the Appellate Division reversed the decision of the Court of Claims and ordered a new trial. The State appealed to the Court of Appeals. The case was argued December 5, 1907, and the appeal was dismissed on the ground that the claim had been paid by legislative appropriation.

HARVEY F. REMINGTON, APPELLANT, vs. THE STATE OF NEW
YORK, RESPONDENT.

This claim was filed for the sum of \$1,600 for the use of lands and waters from 1898 to June 18, 1906, in the town of Wheat-

land, Monroe county, on account of the Forest, Fish and Game Commission using said premises in the propagation of fish. The claim came on to be heard at Rochester, June 18, 1906, but on motion of the Attorney-General was dismissed for want of jurisdiction. The claimant appealed to the Appellate Division. The Appellate Division reversed the decision of the Court of Claims. The State has appealed to the Court of Appeals.

HENRY T. KING, APPELLANT, *vs.* THE STATE OF NEW YORK,
RESPONDENT.

This claim for \$4,317 was filed for damage to land and crops in Sullivan by leakage from the Erie canal. The case was tried at Syracuse, March 31, 1904, and a judgment rendered for \$700. From this judgment claimant appealed to the Appellate Division, and the Appellate Division sustained the judgment of the Court of Claims. Claimant has appealed to the Court of Appeals. No case has been served.

IN APPELLATE DIVISION.

PETER R. HARRIS, APPELLANT, *vs.* THE STATE OF NEW YORK,
RESPONDENT.

This claim was filed for the sum of \$665.53, with interest, for the repayment of purchase money paid into the State Treasury upon purchase from the State and conveyance by certificate of sale of the State Engineer and Surveyor of certain lands in Hamilton county, N. Y., by reason of the failure of the title of the people of the State thereto. The claim was filed under the provisions of chapter 796, Laws of 1897. The case was tried at Albany in January, 1901.

In June, 1901, the Court of Claims rendered judgment dismissing the claim, and from this judgment the claimant appealed to the Appellate Division. The appeal has not been argued.

HENRY W. MATHEWS AND ANOTHER, APPELLANT, vs. THE
STATE OF NEW YORK, RESPONDENT.

This appeal is from a judgment of dismissal of the Court of Claims. The claim was filed for the sum of \$740.18 for moneys assessed upon real estate of the claimant and paid toward the construction of the bridge over the Erie canal at Plymouth avenue, in the city of Rochester, N. Y.

Judgment of dismissal was entered May 23, 1903, and from this judgment notice of appeal has been served. The case has not been argued.

The above-named claimant and other citizens of Rochester, numbering more than three hundred, filed claims, under the provisions of chapter 694 of the Laws of 1900, which act conferred jurisdiction upon the Court of Claims to hear the claim of the city of Rochester and others against the State of New York.

Under special acts of the Legislature, and under chapter 488, Laws of 1881, a general law, entitled "An act in relation to canal bridges," the city authorities of the city of Rochester, with the consent of the Superintendent of Public Works, erected lift-bridges over the Erie canal at five streets in that city in the place of overhead bridges erected at those streets. The law under which these liftbridges were erected, specially provided that the expense of building the same should be assessed and collected, as in the case of other local improvements, from the property benefited. The liftbridges were erected by the action of the city authorities, and the property-owners benefited thereby were assessed by the city government, and paid such assessment to the city, and now seek to recover that amount from the State.

The claim of George H. Babcock, now on appeal, is for the same cause as the above.

THE LONG ISLAND RAILROAD COMPANY, APPELLANT, vs. THE
STATE OF NEW YORK, RESPONDENT.

This is an appeal from a judgment of dismissal of the Court of Claims. The claim was filed April 27, 1900, for \$21,125.19

for the construction of a bridge over the canal connecting Shinnecock and Peconic bays, in the town of Southampton, Suffolk county. The appeal has not been argued.

VERONICA JAESCHKE, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This is an appeal by the claimant from a judgment of dismissal of the Court of Claims. The claim was filed for \$1,000 for the destruction of a dam, and damage to mill race, loss of use of flour mill, and damage to grain and produce in Pittsford, Monroe county, by overflow of water, caused, as was alleged, by the negligent acts of the State's agents in nailing flash boards on the mill dam. The appeal has not been argued. The appellant has not served his case on appeal.

WILLIAM G. RUSSELL, APPELLANT,* *vs.* THE STATE OF NEW YORK, RESPONDENT.

This is a claim for \$669.65, for moneys paid the sheriff of Kings county on an execution issued upon a certain judgment entered upon the forfeiture of a recognizance executed by the claimant. The claim was tried and judgment rendered in favor of the State. The claimant has appealed to the Appellate Division. The appeal has not been argued. Printed papers have not been served.

A. BLEECKER BANKS, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim was filed for \$4,446 for balance for sets of Revised Statutes of the State of New York, sold and delivered to the State of New York. The case was tried in Albany, January

20, 1904. The Court of Claims dismissed the claim, and from this judgment the claimant has appealed to the Appellate Division. The appeal has not been argued. The printed papers have not been served.

MARY MAY, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.

The claim was filed for \$1,050 for permanent damage to land in the town of Pendleton, for the enlargement of the Erie canal, and for damage to land incident to the appropriation. The claim was tried and judgment rendered in favor of the claimant for \$151, with interest. The claimant appealed to the Appellate Division. The appeal has not been argued.

MARGARET MULVILL, AS ADMX., APPELLANT, vs. THE STATE
OF NEW YORK, RESPONDENT.

This claim was filed June 19, 1901, for the sum of \$25,000 for damages for the death of John Mulvihill, while attempting to cross the bridge over the Erie canal, at Salina street, in the city of Syracuse, by reason of the negligence of the officials of the State in charge of said bridge. The claim was tried at Syracuse, March 31, 1904, and judgment rendered in favor of the State, December 27, 1904. The claimant has appealed to the Appellate Division from the judgment of the Court of Claims. The record has not been served.

ANNIE M. SMITH, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.

This claim for the sum of \$13,938.50 was filed for personal injuries sustained while the claimant was employed by the State, at the State Industrial School at Rochester. The claim was tried

at Rochester, February 19, 1905, at which time and place a judgment of dismissal was rendered. The claimant has appealed to the Appellate Division. The record on appeal has not been served.

LENA B. MCINTYRE AND ANOTHER, APPELLANT, *vs.* THE STATE
OF NEW YORK, RESPONDENT.

This is a claim filed for the sum of \$284.83 for damages to premises and property in the town of Elbridge, Onondaga county, by overflow of water from the old Erie canal. The case was tried at Syracuse, May 22, 1905, and a judgment entered dismissing the claim, and from this judgment the claimant has appealed to the Appellate Division. The papers on appeal have not been served.

EDWARD LYNCH, APPELLANT, *vs.* THE STATE OF NEW YORK,
RESPONDENT.

This claim was filed for the sum of \$11,000 for damages to claimant's real estate and manufacturing plant in the city of Syracuse, which was caused, as is alleged, by the filling up of the North Side Cut canal, and for the necessary cost of constructing a branch railroad to his salt manufactory. The claim was filed March 15, 1902, and was tried at Utica, May 22, 1905. The Court of Claims dismissed the claim, and from this judgment claimant has appealed to the Appellate Division. The papers on appeal have not yet been received.

WILLIAM BRISTOL, BY GUARDIAN, APPELLANT, *vs.* THE STATE
OF NEW YORK, RESPONDENT.

This is a claim for the sum of \$5,000 for personal injuries received at the liftbridge over the Erie canal at West Genesee street, in the city of Syracuse, by the alleged careless and negli-

gent operation of such bridge. The claim was filed January 17, 1902, and was tried at Syracuse, May 22, 1905. The Court of Claims rendered a judgment in favor of the State, December 14, 1905. From this judgment the claimant appealed to the Appellate Division.

WILLIAM FITZGERALD, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim was filed for the sum of \$1,200 for damage by the washing out and destruction of a sea wall upon claimant's premises on the shore of Skaneateles lake in the town of Skaneateles, Onondaga county, caused by the State shutting down the gates at the foot of the lake, and causing water to rise above high-water mark. The case was tried at Syracuse, February 22, 1906, and a judgment of dismissal rendered. Claimant appealed from this judgment to the Appellate Division. The case was argued in June, 1907, and sent back by the Appellate Division for a new trial.

SARAH R. EVERS, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim was filed for the sum of \$19,492 for permanent appropriation of land in the village of Waterford, Saratoga county, for the improvement of the Erie, Oswego and Champlain canals. The claim was filed July 31, 1905, and tried at Albany, April 24, 1906. The Court of Claims rendered a judgment on the 18th day of June, 1906, for the sum of \$11,171.85. The claimant appealed to the Appellate Division from this judgment. The Appellate Division affirmed the judgment of the Court of Claims.

HARRIET S. FISHER, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim for the sum of \$20,300 for damages to real property in Mount Hope avenue in the city of Rochester, by overflow

from the Genesee feeder of the Erie canal, was filed February 29, 1904, and tried at Rochester, February 13, 1905. On January 16, 1906, the Court of Claims rendered judgment in favor of the State. The claimant has appealed to the Appellate Division, but the printed papers on appeal have not been received.

HENRY P. BURGARD, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim for the sum of \$18,078.95 was filed for damages for alleged incorrect plans, specifications and measurements for the construction of White's Corners plankroad in Erie county. The claim was filed August 15, 1904, and tried at Buffalo, October 16, 1905. The court rendered judgment dismissing the claim on November 21, 1905, and from this judgment claimant appealed to the Appellate Division. The printed papers on appeal have not been received.

JOHN T. STACKHOUSE, MARY M. CLARK, JAMES D. PALMER, HARRY WILKINSON, GEORGE D. BROWN, WILLIAM MARTIN, MARGARET BUTLER AND OTHERS, AMELIA JANE BLAINE, ELLA L. SHERMAN, WINFIELD S. SHERMAN, CHARLES D. CLAWSON, LOTTIE MARTIN, JAMES B. SMITH, CARRIE PARKS, FRANK L. BROWN, HARRIET RANSOM AND ANOTHER, MARY QUICK CHARLES, AND JOHN M. ROE, APPELLANTS, *vs.* THE STATE OF NEW YORK, RESPONDENT.

The above-mentioned claims arose in Schuyler and Chemung counties, caused by the overflow of the Chemung canal, Falls creek, etc., in the villages of Watkins and Montour Falls. The claims were all tried at Elmira in May, 1903. The Court of Claims rendered a judgment in all these claims in favor of the State, and from those judgments appeals were taken to the Appellate Division. The printed papers have not been received.

THOMAS MARTIN, AS ADMINISTRATOR, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This is a claim for \$15,000 for damages sustained by the death of James Martin, at the Willard State Hospital grounds, Seneca county, caused by being struck by a runaway freight car,

which, as was alleged, was defectively constructed and carelessly and negligently operated by State officials upon a railroad upon said hospital grounds, on January 16, 1902. A motion was made at a term of the Court of Claims in the city of Buffalo on the 16th of October, 1906, for the dismissal of the claim, and on that day a judgment was rendered granting the motion for dismissal. From this judgment the claimant appealed to the Appellate Division. The judgment of the Court of Claims was affirmed by the Appellate Division.

W. NEWTON BENNINGTON, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim for the sum of \$7,500 for damage to real property in Half Moon, Saratoga county, was tried at Albany on the 18th of September, 1906, and a judgment rendered dismissing the claim. From this judgment the claimant has appealed to the Appellate Division. The case has not been argued.

JOSEPH ENDRIES ET AL., APPELLANTS, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim for the sum of \$2,500 for damage to land in the city of Schenectady by overflow and percolation from the Erie canal, was tried April 24, 1906. On the 18th day of September, 1906, the Court of Claims rendered a judgment dismissing the claim, and from this judgment an appeal was taken to the Appellate Division. The case has not been argued.

LUCIEN H. ROWE, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim was filed for the sum of \$1,200 damage to break-water, Seventh lake, Fulton chain, April 1900, 1901, caused by raising the dam outlet of Sixth lake, also for temporary appropriation of land. The case was tried at Utica, March 25, 1907, and judgment of dismissal rendered. The claimant appealed to the Appellate Division, but has served no printed record.

**ROSSELL W. POST, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.**

This claim was filed for the sum of \$1,390 damage to land and crops in the town of Shelby, Orleans county, caused by leakage and overflow from Oak Orchard creek feeder. The claim was tried and judgment of dismissal rendered in May, 1903. From this judgment the claimant appealed to the Appellate Division, and a motion setting aside judgment was granted, and a new trial ordered. The case was tried at Buffalo, October, 1905, and a judgment of \$400 awarded. The claimant appealed to the Appellate Division. The case was argued November, 1907, but has not been decided.

**KATE B. ACER, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.**

This claim was filed for the sum of \$8,369 for damage to land and crops in the town of Shelby, Orleans county, by leakage and overflow of water from Oak Orchard creek feeder. The claim was tried and judgment of dismissal rendered in May, 1903. From this judgment the claimant appealed to the Appellate Division, and a motion setting aside the judgment was granted and a new trial ordered. The case was tried at Buffalo in October, 1905, and a judgment of \$1,500 awarded. The claimant appealed to the Appellate Division. The case was argued November, 1907, but has not been decided.

**OLIVER A. QUAYLE, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.**

This claim for \$39,338.70 was filed for damage for breach of printing contract, entered into with one Williams, and transferred to claimant, and the State of New York, for printing for State departments. In January, 1907, the claim was dismissed on motion of the Attorney-General. The claimant appealed to the Appellate Division. The case was argued May 7, 1907, but has not been decided.

**HORACE H. DIBBLE, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.**

This claim for \$3,770.90 was filed for damage to growing crops in Kingsbury, July 24, 1902, caused by the alleged overflow of Bond creek. The case was tried at Albany, February 18, 1907, and a judgment of \$1,410 rendered. From this judgment the claimant appealed to the Appellate Division. The case was argued November, 1907, but has not been decided.

**PATRICK B. DALEY, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.**

This claim was filed for the sum of \$10,136 for damage to potato crop in Kingsbury, July 24, 1902, caused by overflow of Bond creek. The case was tried at Albany, February 18, 1907, and a judgment of \$4,200 rendered. From this judgment claimant appealed to the Appellate Division. The case was argued November, 1907, but has not been decided.

**ABBY J. VARNEY, APPELLANT, vs. THE STATE OF NEW YORK,
RESPONDENT.**

This claim was filed for the sum of \$494 for damage to nineteen acres of land near Dunham's Basin in the years 1903, 1904, caused by leakage from the Champlain canal. The case was tried at Albany, November 26, 1906, and a judgment of dismissal rendered. The claimant appealed to the Appellate Division. The printed case has not been served.

**MICHAEL C. MEAGHER, APPELLANT, vs. THE STATE OF NEW
RESPONDENT.**

This claim was filed for the sum of \$24,000 for appropriation of 160 acres of land in the county of Essex, by the Forest Preserve Board. The case was tried at Albany, November 26, 1907,

and a judgment of \$7,931.64 rendered. The claimant has appealed to the Appellate Division. The appeal has not been argued.

ALFRED A. HUNT, APPELLANT, *vs.* THE STATE OF NEW YORK,
RESPONDENT.

This claim was filed for \$800 for damage to twenty acres of land in Greenwich in the year 1905, caused by the percolation of the Champlain canal. The case was tried at Albany, September 18, 1906, and a judgment of six cents was rendered. The claimant filed notice of exceptions October 31, 1906.

JOHN VOGEL, APPELLANT, *vs.* THE STATE OF NEW YORK,
RESPONDENT.

This claim was filed for the sum of \$1,500 for permanent appropriation for Barge canal purposes, of a portion of Seventh street in the village of Waterford, adjacent to claimant's premises, and depreciation of value of the same. Judgment of dismissal was rendered June 4, 1907. The claimant has appealed to the Appellate Division. The printed case has been served, but the appeal has not been argued.

JESSIE M. VAN ALSTYNE, RESPONDENT, *vs.* THE STATE OF NEW
YORK, APPELLANT.

This claim was filed for the sum of \$25,000 for personal injury sustained December 22, 1905, by falling from a bridge which crosses an unused portion of the Erie canal near the village of Warners, town of Camillus. The case was tried at Syracuse, February 18, 1907, and judgment rendered for \$750. The State appealed to the Appellate Division. The case was argued November 27, 1907, but no decision has been handed down.

SUSAN B. HUGHSON, APPELLANT, *vs.* THE STATE OF NEW YORK,
RESPONDENT.

This claim was filed for the sum of \$929 for damage to land and crops in Big Flats, in the year 1906, caused by overflow of Chemung canal and feeder. The case was tried at Rochester, May 27, 1907, and judgment of dismissal rendered. The claimant has appealed to the Appellate Division. The case has not been argued.

JULIETTA LEAKE PERKINS ET AL., APPELLANTS, *vs.* THE STATE
OF NEW YORK, RESPONDENT.

This is an appeal to the Appellate Division from a judgment of dismissal of the Court of Claims. The claim was filed for \$86,608.35, and interest thereon, to secure the release of the proceeds of the sale of the property of one John George Leake, deceased, that had been escheated to the State, filed with the Court of Claims under the provisions of chapter 948 of the Laws of 1895. A judgment of dismissal was entered November, 1901, and from this judgment an appeal was taken. On May 1, 1906, the Appellate Division granted the order of the Attorney-General to dismiss this appeal.

GEORGE BURKE ELY, APPELLANT, *vs.* THE STATE OF NEW YORK,
RESPONDENT.

This claim was filed for the sum of \$1,800 for damage to land and crops in Clay, Onondaga county, by reason of raising the dam at Phoenix and raising the waters of the lakes and rivers. The case was tried at Syracuse, February 18, 1907, and a judgment of dismissal rendered. The claimant has appealed to the Appellate Division.

JAY N. OSTRANDER, RESPONDENT, *vs.* THE STATE OF NEW
YORK, APPELLANT.

This claim was filed for \$2,025 for damage to crops in Alabama in the year 1902, caused by the overflow from Oak Orchard

feeder. The case was tried at Buffalo, June 18, 1907, and a judgment of \$240 awarded claimant. The State has appealed to the Appellant Division and also the claimant.

AUGUST RUTHENBERG, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim was filed for the sum of \$25,000 for personal injury sustained about December 5, 1904, while engaged in repairing Brighton lock, 63, in the city of Rochester, caused by the breaking of a derrick. The case was tried at Rochester, July 23, 1907, and a judgment of dismissal rendered. The claimant has appealed to the Appellate Division.

MARY W. BURCHARD, APPELLANT, *vs.* THE STATE OF NEW YORK, RESPONDENT.

This claim was filed for \$4,500 permanent appropriation of land in Gates, for the use of the Barge canal, and depreciation of balance of farm. The case was tried at Rochester, May 27, 1907, and an award of \$857.56 awarded claimant. Notice of exceptions to this judgment were filed by the claimant December 12, 1907.

CANAL JUDGMENTS — 1907.

No.		Claimed.	Awarded.
7522	Hess, S. F. & Co.....	\$27,115 60	\$500 00
7699	Gerrard, Mary E.....	1,500 00	75 00
7856	Grimshaw, Isabella, and another, adm., etc.	10,000 00	Judgment for State
8026	Burke, Mary.	400 00	40 00
8051	Spencer, H. A.....	2,200 00	Judgment for State
8212	Jones, Marvin A.....	450 00	135 00
8213	Greene, Lester	600 00	90 00
8227	Burr, James S.	140 00	120 00
8616	Bauman, Anna	231 75	95 00
8622	Bennett, James and Cath- erine.	75 00	35 00
8623	Goodman, Albert N.....	282 00	100 50
8626	Jewett, Georgiana G....	210 00	95 00
8628	Wilsey, Herrick B.....	150 00	50 00
8662	Fuller, Clement.	150 00	50 00
8680	George, Arthur F.....	1,000 00	96 00
8698	Fitzpatrick, Catherine. ..	2,000 00	240 00
8696	Hilton, Jennie.	200 00	80 00
4602	Davison, Robert	1,555 00	216 90
7253	Quackenbush, Anna, as ad- ministratrix.	15,000 00	Judgment for State
7876	Graves, Martha, and an- other.	425 00	95 00
7878	Sprague, Harvey E	179 50	95 00
7922	Ragan, Jay S.....	500 00	100 00
8258	Linendoll, Antoinette. . .	150 00	50 00
8287	Hanrahan, John.	50 00	30 00
8317	Starin, Abram B., and an- other.	150 00	45 00
8392	Miller, Nelson Jerome...	75 00	15 00
8689	Miller, Nelson Jerome...	40 00	15 00
8706	Shaller, Louis.	200 00	105 00

No.		Claimed.	Awarded.
8738	Starin, Abram B., and others	\$100 00	\$45 00
8773	City of Amsterdam	1,408 70	575 00
8797	Starin, Abram B., and others.	100 00	45 00
8697	Van Alstine, Jessie M.	25,000 00	750 00
6097	Carhart, Henry	807 00	175 00
6115	Bloss, Peter.	916 00	125 00
6121	Lasher, Alice C.	1,582 00	310 00
6127	Walrath, Theodore.	377 50	75 00
6135	Souter, Geo. and Frances.	5,425 00	267 75
6138	Babcock, Riley J., and an- other.	570 00	120 00
6139	Bettinger, Austin J.	790 00	188 50
6140	Brooks, George.	364 00	81 00
6141	Brownell, Byra S.	649 00	130 00
6143	Collins, David and another	498 00	100 00
6144	Cooper, Edgar J.	459 50	100 00
6145	Brown, Edgar J., and an- other.	677 00	125 00
6146	Cowan, Albertus.	878 00	184 00
6147	Dana, Ada B.	1,150 00	50 00
6148	Ebb, Peter, Jr.	475 00	80 00
6149	Ebb, William and Peter.	499 50	90 00
6150	Ebeling, Frederick, as Exr.	677 50	122 50
6151	Eckenbeck, Sanford	336 00	88 20
6155	Friess, Nicholas.	150 00	27 65
6157	Haar, Jacob.	420 00	45 00
6158	Harns, Gilbert H.	321 00	92 95
6159	Harrington, Chauncey and another.	552 00	58 20
6160	Helfer, Albert J.	121 00	25 00
6162	Huntley, Matilda and an- other.	200 00	56 00
6163	Karker, Elizabeth.	270 00	40 00
6164	Kent, Ursula and another.	301 00	40 00

No.		Claimed.	Awarded.
6165	Kimball, Alfred	\$300 00	\$40 00
6166	Kittle, Catharine.	297 50	45 00
6168	Lade, Albert.	492 00	125 00
6169	Lade, William C.	150 00	45 00
6170	Lewis, Edward and Mary.	572 00	90 00
6171	Maringer, Simon.	264 00	30 00
6172	McConville, John.	185 00	25 00
6173	Moth, Frank M., and others.	1,284 00	295 00
6174	Myers, Sylvester.	515 00	78 00
6175	Oot, John.	544 50	120 00
6176	Pennock, Charles and an- other.	1,625 00	330 00
6178	Satterlee, William.	150 00	25 00
6179	Van Schaick, Sarah J., and another	1,030 00	108 00
6181	Shepp, Viola, and another.	279 00	75 00
6182	Shoemaker, Abraham, and another	381 00	80 00
6183	Shoemaker, Arnold F. . . .	75 00	7 50
6184	Snyder, Jacob	342 00	174 65
6185	Snyder, John Peter	445 00	100 00
6186	Stearns, William S., and another	890 00	175 00
6187	Taffner, John	1,614 00	100 00
6190	Taylor, Clarence L.	280 33	58 80
6191	Wheeler, Lois, Mrs.	150 00	20 00
6192	Woodward, Elizabeth and George, as executors . .	425 00	60 00
6210	Fabing, Joseph L.	696 50	172 37
6213	Gerthoffer, Oliver	70 00	22 75
6376	Retchless, John	115 00	20 00
6377	Wiemeier, George H. . . .	290 00	57 00
6513	Babcock, Duane P.	386 00	90 00
6514	Cook, Frederick W.	560 70	80 00
6515	Dygert, Edgar L.	163 00	60 00
6516	Graham, Carl J.	488 10	75 00

No.		Claimed.	Awarded.
6518	Jones, John	\$462 50	\$60 00
6519	Lester, Elisha	1,761 00	100 00
6520	Nixon, Mary E.	200 00	60 00
6564	Burgess, John Martin, an infant	10,000 00	700 00
6735	Dunham, Jesse D.	140 00	40 00
6755	Spencer, Stephen	738 00	100 00
6779	Blanchard, Jennie, as exec- utrix	515 00	60 00
6781	Freeborn, Oliver	304 00	50 00
6784	Maybee, Oliver	350 00	60 00
6841	Harnden, Jonathan	100 00	30 00
6843	Ware, Harvey C.	196 50	40 00
6857	Davidson, Jane	215 50	25 00
6869	Taskey, Charles	427 33	40 00
6872	Warner, George	224 00	66 50
6949	Green, Adelbert	2,350 00	1,000 00
6950	Kennedy, Joseph P.	5,391 00	1,232 00
6972	Graham, Charles F.	500 00	60 00
6983	Barrett, John	270 00	70 00
7014	Kyser, Fred H.	400 00	100 00
7016	Mott, Catherine	200 00	70 00
7119	Jackson, Sarah A., Eliza- beth, executrix James Jackson	840 00	500 00
7086	Conlon, Ella and another.	165 00	15 00
7126	Mapes, Charles	200 00	20 00
7173	Wolford, William A. ...	280 00	25 00
7181	Gay, Grace M.	300 00	25 00
7226	Clifton, Lewis J.	180 00	50 00
7227	Hamill, Herman B.	240 00	25 00
7230	Peck, Smith	200 00	50 00
7301	McIntyre, John C., and another	500 00	35 00
7302	Pickard, Henry	200 00	25 00
7333	Snedeker, Perron	168 75	15 00
7364	Court, De Lonville	400 00	Judgment for State

No.		Claimed.	Awarded.
7370	Ten Eyck, Louis	\$200 00	\$130 72
7371	Ten Eyck, Oscar, an in- fant	10,000 00	500 00
7629	Dibble, Horace H.	3,770 90	1,410 00
7630	Henry, George	2,520 00	1,800 00
7632	Daly, Patrick B.	10,136 00	4,200 00
7575	Campbell, Elizabeth	1,000 00	150 00
7938	Wilson, William J.	125 00	Judgment for State
7939	Wilson, Achus C.	125 00	Judgment for State
7940	Bullard, Charles E.	300 00	Judgment for State
7976	Stiles, David	280 00	Judgment for State
8711	Dougall, George M.	2,000 00	200 00
6214	Greiner, Peter	245 00	25 00
6215	Marte, Peter	290 00	51 00
6218	Parks, Julia and Albert .	430 00	100 00
6219	Plank, Nicholas and Mary	633 50	60 00
6221	Schiesser, Casper	188 00	35 00
6223	Thomas, Nicholas	143 50	52 50
6224	Van Alstyne, Darwin ...	810 00	100 00
6225	Wiemeire, John H.	402 50	87 00
6263	Padbury, Mary W., as executrix Orlando Wil- cox	422 00	100 00
6264	Tegg, William	195 00	63 00
6318	McVoy, Edward	100 00	24 50
6319	Satterlee, Mary, as exec- utrix	177 00	25 00
6386	Kilgus, George E.	102 00	40 00
6387	Kilgus, Michael	319 00	90 00
6489	Sullivan, Laurence	409 80	125 00
6685	Colton, Le Grand	130 00	65 00
6955	Chubb, Josiah	400 00	100 00
6956	Whitcomb, Frank J.	200 00	50 00
7415	James, Walter	220 00	50 00
7487	Brown, Jacob	590 00	90 00
7511	Paddock, Philip and Mercy	250 00	35 00
7512	Burch, Irvin R.	650 00	75 00

No.		Claimed.	Awarded.
7517	Clements, James A.	\$792. 00	\$60 00
7520	Abbott, Alexander W. ...	150 00	30 00
7523	Butler, Martin J., and another	1,000 00	125 00
7532	Kelley, Thomas	150 00	30 00
7534	Barnett, James W.	252 00	30 00
7583	Hamill, Herman B.	240 00	25 00
7594	Maybie, Oliver	215 00	20 00
7595	Suiter, George	1,055 00	140 00
7599	Ecker, Ezriah	125 00	25 00
7601	Holley, Joseph and Nettie E.	100 00	25 00
7603	Stearns, Martha A.	230 00	48 00
7608	Johnson, Byron C.	565 00	75 00
7609	Cole, Gideon W.	1,000 00	75 00
7621	Burst, Baltz	340 00	37 50
7624	Case, Archibald D.	600 00	40 00
7773	McConville, John	185 00	20 00
7774	Walrath, Theodore	244 50	15 00
7803	Martin, Carrie I.	597 00	375 00
7835	Crosby, Ebenezer M.	1,384 00	100 00
7847	McIntyre, John C., and another	500 00	35 00
7896	Baker, Richard	300 00	90 00
7838	Monroe, George W.	300 00	175 00
7942	Pharis, Harriett Ryder ..	864 00	58 00
7944	Whalen, Mary	400 00	50 00
7954	Chubb, Josiah	200 00	100 00
7955	Whitcomb, Frank J.	200 00	50 00
7976	Stiles, David	280 00	Judgment for State
8280	Burch, Irvin R.	650 00	75 00
8282	Paddock, Philip and Mercy	250 00	35 00
8291	Pickard, Henry	200 00	25 00
8296	Butler, Martin J., and another	1,000 00	125 00
8334	Adams, Charles M., and another	175 00	50 00

No.		Claimed.	Awarded.
8375	Eldredge, Charlotte N. . .	\$116 66	\$40 00
8721	Mapes, Amanda	50 00	20 00
8723	Wood, William S.	145 00	20 00
8725	Bowman, Andrew J., Mrs.	300 00	25 00
8727	Walling, Dorcas	125 00	25 00
6839	Allen, Martin I.	198 00	30 00
6707	Barlow, William H.	216 00	45 00
6708	Bosworth, Charles, and an- other	1,080 00	205 00
6710	Perkins, Albert E., and others	1,525 00	383 00
6712	Post, Edward	1,473 00	215 00
6713	Taber, Fred S., as executor Eason Tabor	972 00	156 00
6951	Smith, George W.	175 10	50 00
6954	Williams, Eli A.	404 40	55 00
7082	Harter, Charles W.	150 00	75 00
7129	Froelich, Ida	194 50	61 00
7131	Froehlich, Ida, as execu- trix Phillipina Lietz .	165 00	25 00
7133	Carey, Charles M.	169 27	50 00
7135	Devine, Mary A.	197 00	40 00
7136	Flahaven, Catherine	106 00	30 00
7138	Roberts, William	106 20	45 00
7212	Getman, Horatio S.	125 00	Judgment for State
7213	Kerivan, John T.	175 00	40 00
7254	Goodier, Mary S.	159 40	45 00
7257	Pfahls, Christian J.	97 25	65 00
7258	Harter, Chauncey C.	120 00	40 00
7260	Hulsaver, James	108 00	40 00
7322	Keene, J. M., and Margaret	280 00	50 00
7373	Thurston, Frank A.	663 25	100 00
7546	Steele, William H. H. . .	250 00	110 00
7567	Wegner, Oscar	1,236 23	800 00
7672	Getman, Horatio S.	370 00	187 50
7674	Uhrlan, Ernestine	200 00	30 00
7675	Limpert, John	324 33	110 00

No.		Claimed.	Awarded.
7676	Gilligan, Honora	\$150 00	\$10 00
7678	Keegan, Elizabeth	150 00	40 00
7680	Farrell, Thomas M., as executor, etc.	250 00	35 00
7682	Burst, Frances (substituted for Moses)	300 00	30 00
7684	Wheeler, Charles H.	1,417 89	175 00
7685	Wheeler, Charles H.	25 80	22 00
7686	Thompson, Edward	1,413 50	50 00
7687	Van Dusen, William H. .	100 00	35 00
7688	Frazer, Catharine	635 00	65 30
7689	Frazer, Catharine	59 10	20 00
7690	Frazer, John H.	225 00	20 00
7691	Frazer Brothers	75 70	50 00
7692	McGowan, S. S., as admin- istrator estate Samuel Leeman	75 00	30 00
7693	Platner, Alma	82 25	32 00
7694	Platner, Alma	201 71	65 00
7695	Hamer, D. L.	49 75	35 00
7696	Hamer, D. L.	107 80	80 00
7697	Roberts, William	174 50	45 00
7698	Lower, Helen	454 85	55 85
7700	Carey, Charles and Maude L.	851 00	95 00
7701	Farrell, Frederick	300 00	60 00
7702	Sohn, George	42 75	27 00
7703	Russell, Charles and Carrie	350 00	95 00
7704	Manning, John	381 64	85 00
7709	Pfahls, Chris J.	576 95	85 00
7711	Devine, Mary A.	1,275 00	55 00
7710	Potter, Mary A.	1,088 46	80 00
7712	Rose, Richard	619 05	85 00
7713	Manning, Mary A.	503 50	30 00
7714	Sticht, John H.	550 00	35 00
7715	Sticht, John H.	5 00	5 00
7716	Deaner, George	197 65	72 50

No		Claimed.	Awarded.
7717	Hathaway, E. E.	\$605 50	\$43 75
7732	Graham, Marian A.	700 00	60 00
7735	Nipe, Mary C.	250 00	40 00
7736	Crossman, John	50 85	45 85
7825	Leaman, Catherine, and others	75 00	Judgment for State
7857	Post, Edward, and another	720 00	105 00
7858	Perkins, Albert E., and others	730 00	180 00
7859	Bosworth, Charity A., as administratrix	503 00	95 00
7874	Hingre, John	181 40	65 00
7883	Bowers, Wilford R.	330 50	35 00
7884	Kneeskern, James K.	213 50	47 50
7885	Crumb, Florence M.	614 25	55 00
7890	Moran, Hattie V.	50 00	10 00
7891	Bennison, Patrick C. ...	215 00	40 00
7893	Nipe, Lansing and Eva ..	232 00	45 00
7894	Fullem, Frank and Anna.	445 70	100 00
7915	Barlow, William H.	100 00	21 00
7986	Taber, Fred S., as exec- utor Eason Taber	390 00	63 00
8068	Wegner, Oscar	2,486 42	1,600 00
8121	Newton, Herman J.	355 00	Judgment for State
8122	Bettinger, Austin J.	801 50	Judgment for State
8123	Carpenter, William E., and others	374 00	Judgment for State
8124	Bloss, Nettie and Peter ..	1,150 00	Judgment for State
8125	Lasher, Alice C., and an- other	1,527 00	Judgment for State
8126	Cowan, Albertus	600 00	Judgment for State
8127	Lasher, Henry M.	646 00	Judgment for State
8128	Spencer, Stephen	482 00	Judgment for State
8139	Perkins, Albert E., and others	1,266 00	292 00
8145	Post, Edward	895 00	130 00
8146	Winn, Hattie J., and John	1,125 00	220 00

No.		Claimed.	Awarded.
8173	Macomber, Jay	\$332 00	\$105 00
8178	Barlow, William H.	405 00	84 00
8179	Taber, Fred, executor of Easton	651 00	96 00
8197	Hulsaver, James	192 63	60 00
8202	Watkins, John S.	70 00	40 00
8204	Tucker, Catherine E.	200 00	60 00
8203	Trustees Diocese of Al- bany	235 50	120 00
8205	Fitzgerald, Margaret	135 00	40 00
8206	Harter, Fred H.	125 00	40 00
8236	Johns, Ada	250 00	80 00
8237	Bargy, Mary, as executrix Charles	300 00	100 00
8238	Sterling, Frank	240 00	80 00
8283	Folts, Margarette C.	100 00	70 00
8285	Folts, Emma J., and others, as guardian	200 00	100 00
8683	Keno, Albert P.	1,000 00	175 00
8690	Jones, John R.	400 00	100 00
8733	Parry, Thomas	150 00	50 00
8755	Paddock, Willard	295 00	90 00
6088	Hazzard, Perry O.	5,000 00	1,500 00
6311	Rowe, Lucien	1,200 00	Judgment for State
6349	Kenwell, Eliza E.	400 00	Judgment for State
6360	Williams, John H.	300 00	Judgment for State
6457	Ostrander, Charles	500 00	241 91
6533	Norton, Raymond, and an- other	4,500 00	Judgment for State
6559	Michael, Hattie B.	410 00	Judgment for State
6560	Michael, Myron J.	380 00	Judgment for State
7423	Rowe, Lucien H.	500 00	Judgment for State
7753	Johnson, Frank Riley ...	500 00	Judgment for State
8826	Reeners, Joseph F.	252 60	Judgment for State
7706	Lietz, Phillipina	300 00	60 00
8217	Union and Advertiser Company	465 28	445 28

No.		Claimed.	Awarded.
8257	Gallagher, Mary A.	\$250 00	\$70 00
8315	Rogan, Thomas, and others	500 00	180 00
8713	Willey, Thomas M.	150 00	20 00
8796	Maurer, Emanuel	200 00	15 00
7840	Dwyer, Dennis	300 00	Judgment for State
8335	Baker, Richard	10,000 00	Judgment for State
8347	Heinisch, Augustus	1,600 00	Judgment for State
8348	Briggs, Jeremiah B.	250 00	Judgment for State
8349	Still, Sumner S.	300 00	Judgment for State
8350	Foster, John.	200 00	Judgment for State
8351	Glover, Edward G.	850 00	Judgment for State
8352	McLeod, Charlotte	600 00	Judgment for State
8353	McLeod, Roderick.	540 00	Judgment for State
8694	Brown, Henry H.	1,000 00	50 00
8747	Cochrane, William B.	1,000 00	70 00
6511	Chapman, Jerry V.	680 00	200 00
7584	Bateman, John.	180 00	30 00
8189	White, Edward.	567 60	60 00
8196	Burke, Thomas M. A.	2,000 00	500 00
8228	Laatsch, Fred J.	200 00	30 00
8381	Pilborn, John A.	130 00	10 00
8714	Bateman, John.	50 00	15 00
6960	Smith & Powell Company.	17,145 00	Judgment for State
6980	West, Elmer J.	175 00	Judgment for State
7005	Weller, Lois, and another, as administrators	500 00	Judgment for State
7043	Ely, George Burke	1,800 00	Judgment for State
8022	White, Charles H.	1,000 00	Judgment for State
8072	West, Elmer J.	175 00	Judgment for State
8074	Weller, Lois P., and an- other, administrators ..	500 00	Judgment for State
8141	Fuller, Carrie B.	600 00	50 00
8395	Lageunesse, Delina.	1,200 00	175 00
8397	Beston, William.	500 00	Judgment for State
8692	Slavin, James.	1,400 00	100 00
8699	Maurer, Emanuel.	200 00	Judgment for State
8708	Foss, Henry.	135 00	40 00

No.		Claimed.	Awarded.
8717	Hughson, Susan B., and another, executrix	\$959 60	Judgment for State
8809	Finouer, John, Sr.	100 00	\$35 00
8810	Angus, Loren W., as ad- ministrator.	100 00	45 00
8820	Smith, John L.	100 00	32 50
8871	Linendoll, Antoinette. . . .	75 00	25 00
8921	White, Charles H.	1,000 00	Judgment for State
8924	West, Elmer J.	175 00	Judgment for State
8941	Weller, Leonard P., as ad- ministrator	500 00	Judgment for State
8973	Simmons, Stephen.	100 00	20 00
6362	Brown, Frances.	31 34	Judgment for State
6363	Group, Fred J.	152 60	Judgment for State
6361	Brown, Allison J.	57 00	Judgment for State
6364	Forscher, Henry.	104 30	Judgment for State
6365	Hayes, Bridget.	65 00	Judgment for State
6366	Koehler, Sarah.	28 80	Judgment for State
6367	Kraushaar, Edward.	183 00	Judgment for State
6368	Streeter, George.	256 00	Judgment for State
6389	Baetzel, Julia.	1,090 00	Judgment for State
6390	Eckhardt, Emilie.	1,156 50	Judgment for State
6391	Hanan, Mary.	21 95	Judgment for State
6392	Kraushaar, Alfred S.	585 00	Judgment for State
6393	Lighthouse, Frank J.	96 66	Judgment for State
6394	McNamara, Charles J. . . .	348 60	Judgment for State
6396	Post, George W.	46 50	Judgment for State
6397	Remhard, Louise.	300 00	Judgment for State
6398	Scherer, Charles.	334 20	Judgment for State
6399	Serth, Jacob.	22 46	Judgment for State
6400	Surridge, James.	23 85	Judgment for State
6401	Thomas, Benjamin F. and Mary.	664 00	Judgment for State
6402	Tompkins, Elizabeth	652 00	Judgment for State
6403	Weber, Charles.	53 15	Judgment for State
6404	Zimmerli, Rosina.	48 75	Judgment for State
6405	Anderson, George.	63 00	Judgment for State

No.		Claimed.	Awarded.
6406	Bruton, Lawrence	\$773 80	Judgment for State
6407	Campbell, Barber L.	99 00	Judgment for State
6408	Carmel, William.	62 00	Judgment for State
6409	Colgrove, Eva.	490 00	Judgment for State
6410	Dalton, Patrick.	451 65	Judgment for State
6411	French, Susan.	425 00	Judgment for State
6412	Heisinger, Delia.	102 75	Judgment for State
6413	Hibbard, Temperance . . .	148 15	Judgment for State
6414	Hilberer, Benedict.	52 55	Judgment for State
6415	Kraus, Benjamin.	110 00	Judgment for State
6416	Loysen, Cornelius R.	25 00	Judgment for State
6417	O'Brien, Minnie F.	32 00	Judgment for State
6418	Popp, Margaretha, as ex- ecutrix.	115 00	Judgment for State
6419	Schuler, Albert.	29 90	Judgment for State
6420	Smith, Grant C.	112 95	Judgment for State
6421	Spencer, Samuel.	44 95	Judgment for State
6422	Way, Robert.	32 40	Judgment for State
6423	Whitney, Albert E.	29 50	Judgment for State
6424	Underwood, Anna.	67 60	Judgment for State
6428	Siebert, Robert C.	347 00	Judgment for State
6438	Keidel, John.	252 00	Judgment for State
6439	Zugelder, Joseph M.	306 00	Judgment for State
6441	Carpenter, Edmund M. . .	1,440 00	Judgment for State
6442	Costello, Thomas.	104 90	Judgment for State
6443	Tallman, John E. W.	82 00	Judgment for State
6444	Lumbert, Mary	802 00	Judgment for State
6452	Gaenzler, Conrad	334 00	Judgment for State
6453	Grieco, Sabot.	292 00	Judgment for State
6454	Kalb, Katherine.	1,272 00	Judgment for State
6464	Burke, Daniel.	430 00	Judgment for State
7457	Ostrander, Jay N.	2,025 00	\$240 00
8085	Strobel, Daniel F., and an- other.	55,896 77	38,712 00
6682	Fonda, Jane M.	600 00	75 00
7852	Fonda, Jane M.	600 00	75 00
8053	Allen, Theodore D.	1,600 00	Judgment for State

No.		Claimed.	Awarded.
8133	Carey, Thomas H., and another.....	\$220 00	\$72 50
8134	Carey, Thomas H., and another.	200 00	75 00
8378	Ruthenberg, August. . . .	25 000 00	Judgment for State
8419	Griffin, Emma.	500 00	200 00
8643	Harris, Maria	50 00	15 00
8652	Hickey, James A., as executor of Patrick, deceased.	190 00	35 00
8707	Perkins, Thomas.	275 00	75 00
8716	Fonda, Jane M.	300 00	37 50
8475	Royce, George E.	51 00	20 00
8736	Mayer, Alexander U. . . .	1,350 00	Judgment for State
8869	Gallagher, Mary A. . . .	100 00	25 00
8909	Heard, Gertrude S., an infant by guardian. . . .	5,000 00	Judgment for State
8936	Taylor, William.	100 00	20 00
9007	Paris, Jessie.	1,100 00	Judgment for State
		<hr/> \$430,419 86	<hr/> \$79,706 38
		<hr/> <hr/>	<hr/> <hr/>

BARGE CANAL JUDGMENTS — 1907.

No.		Claimed.	Awarded.
8056	Davis, William C.	\$1,800 00	\$1,116 83
8608	Bennett, Lewis M.	1,839 49	Judgment for State
8609	Sperry, Fanny M.	525 00	Judgment for State
8610	Tosh, Henry.	1,538 45	Judgment for State
8252	Osborn, Estelle May, as administ'r Edward Waldron.	14,525 00	Judgment for State
8275	Alexander, Michael J. . .	12,000 00	Judgment for State
8825	Bassett, Frances M. . . .	1,047 00	Judgment for State
8169	Richardson, Edward J. . .	780 50	275 00
8057	Gale, Jennie E.	1,600 00	150 00
8756	Wilde, John D.	1,942 20	70 00

No.		Claimed.	Awarded.
8649	Vogel, John.	\$1,500 00	Judgment for State
8166	Macrea, William.	3,500 00	Judgment for State
8167	Richardson, Anna, et al..	12,000 00	Judgment for State
8168	Reinagel, Thomas and Louisa.	4,000 00	Judgment for State
8390	Chase, Alice H.	530 29	\$310 75
8248	Payne, George W.	7,422 50	2,336 67
8249	Burchard, Mary W.	4,500 00	857 76
8269	Rapp, William G., and Catherine C.	3,500 00	2,440 12
8837	Payne, George W., and Ella, his wife.	214 55	53 94
8867	Scheuerman, Clara.	1,750 00	488 14
8612	Brayman, Anna Maria. . .	2,500 00	Judgment for State
8838	Coolidge, Frank.	5,000 00	Judgment for State
8915	Bannkratz, William A. . .	625 00	Judgment for State
		<hr/>	<hr/>
		\$84,639 98	\$8,099 21
		<hr/>	<hr/>

OTHER THAN CANAL JUDGMENTS — 1907.

No.		Claimed.	Awarded.
6687	Quayle, Oliver A.	\$39,338 70	Judgment for State
7044	Rice, Arvin, as receiver, etc.	17,116 51	Judgment for State
8539	Nussbaum, Myer.	12,000 00	Judgment for State
5883	Kittel, Mathilde, as execu- trix Joseph J. Kittel, in place of M. Stauder... .	6,300 00	\$1,005 13
5959	Birrell, Alice I.	5,911 00	2,505 95
7920	Meagher, Michael C.	24,000 00	7,065 00
6023	Weissman, Adelgunde. . . .	12,500 00	1,335 83
7794	County of Delaware.	2,555 69	2,555 69
7790	County of Onondaga.	2,243 00	1,505 00
8775	Stevenson, William D. . .	2,000 00	Judgment for State

No.		Claimed.	Awarded.
5375	Linthecum, Robert B., and others.	\$86,608 35	Judgment for State
5374	Smith, Festus Allen, and others.	86,608 35	Judgment for State
		<hr/>	<hr/>
		\$297,181 60	\$15,972 60
		<hr/>	<hr/>
	Total.	\$812,241 44	\$103,778 19
		<hr/>	<hr/>

SPECIAL FRANCHISE TAX.

PROCEEDINGS BY CERTIORARI TO REVIEW THE ACTION OF THE STATE BOARD OF TAX COMMISSIONERS IN THE ASSESSMENT OF SPECIAL FRANCHISES, IN WHICH THE ATTORNEY-GENERAL APPEARS FOR THE STATE BOARD OF TAX COMMISSIONERS.

PROCEEDINGS COMMENCED DURING THE YEAR 1907.

Names of Relators and Tax Districts.	Assessed Valuations.
The Cataract Power & Conduit Co., county of Erie, city of Buffalo.....	\$1,475,000 00
New England Telegraph Co., county of Erie, city of Buffalo.	60,000 00
Western Union Telegraph Co., county of Erie, city of Buffalo	170,000 00
New York Central & Hudson River Railroad Co., county of Erie, city of Buffalo.....	524,500 00
Frontier Telephone Co., county of Erie, city of Buffalo.	640,000 00
Buffalo Natural Gas Fuel Co., county of Erie, city of Buffalo.	1,450,000 00
New York Transit Co., county of Erie, city of Buffalo.	20,000 00
Buffalo General Electric Co., county of Erie, city of Buffalo.	1,310,000 00
The Delaware, Lackawanna & Western Railroad Co., and The New York, Lackawanna & Western Railway Co., county of Erie, city of Buffalo.	135,000 00
Buffalo Gas Co., county of Erie, city of Buffalo.	2,150,000 00
Peoples' Gas Light & Coke Co., county of Erie, city of Buffalo.	65,000 00
American Telephone & Telegraph Co., county of Erie, city of Buffalo.....	38,250 00
Erie Railroad Co., county of Erie, city of Buffalo	5,000 00
Erie Railroad Co., county of Erie, city of Buffalo (William St.).	11,500 00
Crosstown Street Railway Company of Buffalo, county of Erie, city of Buffalo	1,830,000 00
International Railway Co., county of Erie, city of Buffalo	6,450,000 00
Automatic Fire Alarm Co., city of New York, borough of Manhattan.	60,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Long Island Railroad Co., city of New York, borough of Brooklyn.	\$100,000 00
Jamaica Water Supply Co., city of New York, borough of Queens.	800,000 00
American Telephone & Telegraph Co., county of Monroe, city of Rochester.	12,000 00
New England Telegraph Co., county of Monroe, city of Rochester.	12,000 00
New England Telegraph Co., county of Chau- tauqua, city of Jamestown.	3,500 00
Ithaca Street Railway Co., county of Tompkins, city of Ithaca	60,000 00
Fonda, Johnstown & Gloversville Railroad Co., county of Fulton, city of Gloversville.	31,000 00
Johnstown, Gloversville & Kingsboro Horse Railroad Co., county of Fulton, city of Gloversville.	36,000 00
Ithaca Telephone Co., county of Tompkins, city of Ithaca.	28,000 00
Inter-Ocean Telephone & Telegraph Co., county of Monroe, city of Rochester.	5,000 00
Hudson Valley Railway Co., county of Saratoga.	135,100 00
County of Washington.	102,000 00
County of Warren.	93,000 00
New York Central & Hudson River Railroad Co., city of New York, borough of Manhattan (Park avenue).	11,500,000 00
Interborough Rapid Transit Co., city of New York, borough of Manhattan.	20,000,000 00
Borough of the Bronx.	4,000,000 00
Second Avenue Railroad Co., city of New York.	5,770,000 00
The Third Avenue Railroad Co., city of New York.	11,320,000 00
Twenty-third Street Railway Co., city of New York.	3,170,000 00
Central Crosstown Railroad Co., city of New York.	750,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Christopher & Tenth Street Railroad Co., city of New York.	\$1,560,000 00
Forty-second Street, Manhattanville & St. Nicholas Avenue Railway Co., city of New York.	4,780,000 00
Dry Dock, East Broadway & Battery Railroad Co., city of New York.	2,165,000 00
Kings Bridge Railway Co., city of New York..	862,000 00
Thirty-fourth Street Crosstown Railway Co., city of New York.	1,370,000 00
Fulton Street Railroad Co., city of New York..	147,000 00
Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Co., city of New York.	425,000 00
Fort George & Eleventh Avenue Railroad Co., city of New York.	260,000 00
Wall & Cortland Streets Ferries Railway Co., city of New York.	13,000 00
Union Railway Company of New York City, city of New York.	4,780,000 00
Westchester Electric Railroad Co., city of New York.	138,000 00
Yonkers Railroad Co., city of New York.	83,000 00
New York, Westchester & Connecticut Traction Co., city of New York.	5,000 00
Bronx Traction Co., city of New York.	200,000 00
Edenwald Street Railway Co., city of New York.	12,000 00
The Southern Boulevard Railroad Co., city of New York.	223,000 00
Metropolitan Street Railway Co., city of New York.	24,600,000 00
Bleecker Street & Fulton Ferry Railroad Co., city of New York.	830,000 00
Broadway & Seventh Avenue Railroad Co., city of New York.	9,040,000 00
Central Park, North & East River Railroad Co., city of New York.	3,650,000 00
Eighth Avenue Railroad Co., city of New York.	6,590,000 00
Forty-second Street & Grand Street Ferry Railroad Co., city of New York.	1,430,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Ninth Avenue Railroad Co., city of New York..	\$3,700,000 00
New York & Harlem Railroad Co., city of New York (city line).	10,617,000 00
Sixth Avenue Railroad Co., city of New York..	5,170,000 00
The Fonda, Johnstown & Gloversville Railroad Co., county of Montgomery, city of Amsterdam	100,000 00
The Edison Electric Light & Power Co., county of Montgomery, city of Amsterdam.	40,000 00
Williams Terminal Railway Co., city of New York, borough of Brooklyn.	4,000 00
Richmond Hill & Queens County Gas Light Co., city of New York, borough of Queens	125,000 00
Brooklyn City & Newtown Railroad Co., city of New York:	
Borough of Brooklyn.	2,910,000 00
Borough of Queens.	90,000 00
Jamaica Gas Light Co., city of New York, borough of Queens.	150,000 00
Brooklyn Union Gas Co., city of New York, borough of Brooklyn.	17,200,000 00
Coney Island & Brooklyn Railroad Co., city of New York, borough of Brooklyn.	1,700,000 00
Bush Terminal Railroad Co., city of New York, borough of Brooklyn.	350,000 00
Flatbush Gas Co., city of New York, borough of Brooklyn.	875,000 00
Newtown Gas Co., city of New York, borough of Brooklyn.	625,000 00
Woodhaven Gas Light Co., city of New York, borough of Brooklyn.	145,000 00
Hornellsville Telephone Co., county of Steuben, city of Hornell.	18,000 00
The New York Steam Co., city of New York, borough of Manhattan.	500,000 00
New York Mutual Gas Light Co., city of New York.	4,050,000 00
New York & Queens Electric Light & Power Co., city of New York.	300,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
New York & Queens Gas Co., city of New York.	\$140,000 00
Citizens Water Supply Company of Newtown, city of New York, borough of Queens.....	676,000 00
Amsterdam Electric Light, Heat & Power Co., city of New York, borough of Brooklyn.....	55,000 00
Edison Electric Illuminating Co. of Brook- lyn, city of New York, borough of Brooklyn..	10,100,000 00
Central Union Gas Co., city of New York.....	2,050,000 00
Stock Quotation Telegraph Co., city of New York	160,000 00
Northern Union Gas Co., city of New York....	1,150,000 00
New Amsterdam Gas Co., city of New York...	8,150,000 00
The Standard Gas Light Company of City of New York, city of New York.....	5,980,000 00
The Consolidated Gas Co., of New York, city of New York.	33,640,000 00
Westchester Lighting Co., city of New York....	275,000 00
Manhattan Railway Co., city of New York:	
Borough of Bronx.	2,900,000 00
Borough of Manhattan.	72,000,000 00
Western Union Telegraph Co., city of New York.	671,500 00
Buffalo & Williamsville Electric Railway Co., county of Genesee, town of Batavia.....	112,000 00
Fulton County Gas & Electric Co., county of Fulton, city of Gloversville.....	210,000 00
New York Mail & Newspaper Transportation Co., city of New York:	
Borough of Manhattan.	50,000 00
Borough of Brooklyn.	40,000 00
Pneumatic Service Co., city of New York, bor- ough of Manhattan.	150,000 00
Woodhaven Water Supply Co., city of New York, borough of Queens.....	210,000 00
Coney Island & Gravesend Railway Co., city of New York, borough of Brooklyn.....	140,000 00
The Brooklyn Heights Railroad Co., city of New York:	
Borough of Brooklyn.	19,800,000 00
Borough of Queens.	1,910,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
South Brooklyn Railway Co., city of New York, borough of Brooklyn.	\$20,000 00
The Brooklyn Heights Railroad Co., city of New York, borough of Brooklyn.	115,000 00
Brooklyn, Queens County & Suburban Railroad Co., city of New York:	
Borough of Brooklyn.	3,200,000 00
Borough of Queens.	170,000 00
Brooklyn Union Elevated Railroad Co., city of New York:	
Borough of Brooklyn.	18,300,000 00
Borough of Queens.	60,000 00
The Nassau Electric Railroad Co., city of New York, borough of Brooklyn.	10,950,000 00
Great South Bay Water Co., county of Suffolk:	
Town of Islip.	86,800 00
Town of Brookhaven.	38,000 00
Jamaica Water Supply Co., county of Nassau, town of Hempstead.	15,000 00
Nassau County Water Co., county of Nassau:	
Town of North Hempstead.	14,000 00
Town of Oyster Bay.	43,000 00
New York Central & Hudson River Railroad Co., county of Oswego, city of Oswego.	126,000 00
New York Central & Hudson River Railroad Co., county of Steuben, city of Corning.	75,000 00
Nassau Light & Power Co., county of Nassau:	
Town of Hempstead.	36,000 00
Town of North Hempstead.	100,000 00
Town of Oyster Bay.	60,000 00
Sea Cliff Water Co., county of Nassau, town of Oyster Bay.	20,000 00
Crystal City Gas Co., county of Steuben, city of Corning.	88,000 00
Great South Bay Water Co., county of Suffolk:	
Town of Islip.	86,800 00
Town of Brookhaven.	38,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
The New York Edison Co., city of New York:	
Borough of Manhattan.	\$32,040,000 00
Borough of Bronx.	1,450,000 00
Borough of Brooklyn.	25,000 00
United Electric Light & Power Co., city of New York.	4,925,000 00
Consolidated Telegraph & Electrical Subway Co., city of New York:	
Borough of Manhattan.	6,010,000 00
Borough of Bronx.	425,000 00
The Brush Electric Illuminating Co., of New York, city of New York.	300,000 00
Cleveland Water Co., county of Oswego:	
Town of Constantia.	15,000 00
County of Oneida:	
Town of Vienna.	1,000 00
Commercial Cable Co., city of New York.	200,000 00
New England Telegraph Co., city of New York.	360,430 00
Richmond Light & Railroad Co., city of New York, borough of Richmond.	500,000 00
Troy Gas Co., county of Rensselaer, city of Troy	640,500 00
New York Central & Hudson River Railroad Co., county of Erie, city of Tonawanda.	30,000 00
United Traction Co., county of Albany, city of Cohoes.	120,000 00
Staten Island Midland Railroad Co., city of New York, borough of Richmond.	160,000 00
Lockport Hydraulic Co., county of Niagara, city of Lockport.	25,000 00
Corning & Painted Post Street Railway Co., county of Steuben, city of Corning.	65,000 00
Glens Falls Gas & Electric Light Co., county of Warren:	
Town of Queensbury.	60,000 00
Town of Moreau.	1,000 00
Cohoes-Waterford Home Telephone Co., county of Albany, city of Cohoes.	23,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Kings County Lighting Co., city of New York, borough of Brooklyn.	\$750,000 00
Queens County Water Co., city of New York, borough of Queens.	240,000 00
United Traction Co., county of Rensselaer, city of Troy.	1,300,000 00
Cohoes Railway Co., county of Albany, city of Cohoes.	83,000 00
United Traction Co., county of Rensselaer, city of Rensselaer.	77,400 00
Cohoes Gas Light Co., county of Albany, city of Cohoes.	100,000 00
Fonda, Johnstown & Gloversville Railroad Co., county of Montgomery, city of Johnstown... .	50,000 00
The Adirondack Lakes Traction Co., county of Montgomery, town of Johnstown.	2,500 00
Fonda, Johnstown & Gloversville Railroad Co., county of Schenectady, town of Glenville... .	1,500 00
The Fonda, Johnstown & Gloversville Railroad Co., county of Montgomery, town of Mohawk	8,000 00
Fonda, Johnstown & Gloversville Railroad Co., county of Montgomery, town of Amsterdam.	12,000 00
Syracuse Rapid Transit Railway Co., county of Onondaga, city of Syracuse.	1,900,000 00
Elmira Water, Light & Railroad Co., county of Chemung, town of Horseheads.	50,000 00
New York Central & Hudson River Railroad Co., county of Montgomery, town of Cana- joharie	62,000 00
American Telephone & Telegraph Co., county of Rensselaer, city of Troy.	28,950 00
American Telephone & Telegraph Co., county of Onondaga, city of Syracuse.	13,200 00
Elmira & Seneca Lake Traction Co., county of Chemung:	
Town of Horseheads	4,000 00
Town of Veteran	6,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
County of Schuyler:	
Town of Montour.....	\$18,000 00
Town of Dix	16,000 00
Niagara Gorge Railroad Co., county of Niagara	34,000 00
Larchmont Water Co., county of Westchester, town of Mamaroneck	45,000 00
Lewiston & Youngstown Frontier Railway Co., county of Niagara, town of Lewiston.....	90,000 00
Syracuse Lighting Co., county of Onondaga:	
Town of De Witt.....	34,000 00
Town of Geddes	16,000 00
Town of Manlius	5,500 00
Town of Onondaga	5,000 00
Town of Salina	11,500 00
Town of Van Buren.....	4,000 00
Oneonta & Mohawk Valley Railroad Co., county of Otsego, town of Oneonta.....	45,000 00
Oneonta & Mohawk Valley Railroad Co., county of Otsego, town of Laurens.....	12,800 00
Oneonta & Mohawk Valley Railroad Co., county of Otsego:	
Town of Hartwick	1,200 00
Town of Richfield	5,100 00
Town of Otsego.....	24,800 00
County of Herkimer:	
Town of German Flatts.	8,800 00
Town of Warren	1,600 00
New York Central & Hudson River Railroad Co., county of Onondaga, city of Syracuse...	990,500 00
Livonia Salt & Mining Co., county of Living- ston, town of Livonia.....	3,000 00
Schenectady Railway Co., county of Schenec- tady:	
Town of Rotterdam	45,000 00
Town of Glenville.....	25,000 00
County of Albany, city of Watervliet.....	85,000 00
Hudson River Telephone Co., county of Orange, city of Newburgh	55,500 00

Names of Relators and Tax Districts.	Assessed Valuations.
Hudson River Telephone Co., county of Ulster, city of Kingston	\$81,700 00
American Telephone & Telegraph Co., county of Rensselaer, city of Rensselaer.....	8,350 00
Municipal Gas Co., county of Albany, city of Watervliet	40,000 00
Hudson River Telephone Co., county of Rens- selaer, city of Troy.....	103,200 00
Schenectady Illuminating Co., county of Sche- nectady, town of Rotterdam.....	15,700 00
Schenectady Illuminating Co., county of Sara- toga, town of Clifton Park.....	3,000 00
Port Jervis Water Works Co., county of Orange, town of Deer Park.....	80,000 00
Albany & Hudson Railroad Co., county of Co- lumbia, city of Hudson.....	50,000 00
Waterford Water Works Co., county of Sara- toga, town of Waterford.....	28,000 00
Poughkeepsie Light, Heat & Power Co., county of Dutchess, city of Poughkeepsie.....	175,000 00
Port Jervis Elctric Light, Power, Gas & Rail- road Co., county of Orange, city of Port Jervis	50,000 00
Newburgh Light, Heat & Power Co., county of Orange:	
City of Newburgh	150,000 00
Town of Newburgh	9,500 00
Town of New Windsor.....	16,000 00
Town of Marlborough	6,000 00
Green Island Water Supply Co., county of Al- bany, town of Green Island.....	14,000 00
Cohoes Gas Light Co., county of Saratoga, town of Waterford	10,000 00
New York Interurban Water Co., county of Westchester:	
Town of Harrison.	48,000 00
Town of Mamaroneck.....	80,800 00
Town of Pelham.	20,500 00
Town of Rye.	12,500 00

Names of Relators and Tax Districts.	Assessed Valuations.
Orange County Traction Co., county of Orange:	
City of Newburgh.	\$90,000 00
Town of Newburgh.	50,000 00
Town of Montgomery.	30,000 00
United Traction Co., county of Albany, city of Watervliet.	114,200 00
Fulton County Gas & Electric Co., county of Montgomery, town of Johnstown.	60,000 00
Albany & Hudson R. R. Co., county of Rensselaer, city of Rensselaer.	40,000 00
Albany & Hudson R. R. Co., county of Columbia, town of Kinderhook.	8,500 00
Syracuse Lighting Co., county of Onondaga, city of Syracuse.	1,860,000 00
New York Central & Hudson River R. R. Co., county of Niagara, city of Lockport.	70,000 00
New York Central & Hudson River R. R. Co., county of Niagara, city of North Tonawanda.	65,000 00
United Traction Co., county of Saratoga, town of Waterford.	33,600 00
United Traction Co., county of Albany, town of Green Island.	72,000 00
Clinton Telephone Co., county of Clinton, city of Plattsburgh.	13,000 00
Hudson River Telephone Co., county of Saratoga:	
Town of Greenwich.	10,650 00
Town of Ft. Edward.	8,800 00
Hudson River Telephone Co., county of Greene, town of Catskill.	17,325 00
Hudson River Telephone Co., county of Ulster, town of Saugerties.	15,250 00
Hudson River Telephone Co., county of Albany, town of Colonie.	39,500 00
Hudson River Telephone Co., county of Rensselaer:	
Town of Hoosick.	14,950 00
Town of Poestenkill.	2,700 00
Town of Brunswick.	3,150 00

Names of Relators and Tax Districts.	Assessed Valuations.
Hudson River Telephone Co., county of Westchester, town of Bedford.....	\$13,275 00
Hudson River Telephone Co., county of Warren:	
Town of Caldwell.	6,375 00
Town of Bolton	5,275 00
Hudson River Telephone Co., county of Columbia:	
Town of Germantown	2,575 00
Town of Ghent.	2,300 00
Hudson River Telephone Co., county of Clinton:	
Town of Mooers.	4,975 00
Town of Champlain.	4,500 00
Town of Saranac.	3,900 00
Town of Black Brook	3,775 00
Town of Chazy.	2,475 00
Hudson River Telephone Co., county of Orange, town of Deer Park.....	13,000 00
Hudson River Telephone Co., county of Ulster:	
Town of Lloyd.	5,675 00
Town of New Paltz	5,100 00
Watervliet-Green Island Home Telephone Co., county of Albany:	
City of Watervliet.	9,500 00
Town of Green Island	1,550 00
Niagara County Home Telephone Co., county of Niagara:	
City of Niagara Falls	40,000 00
City of Lockport.	22,000 00
City of North Tonawanda	14,000 00
Commercial Union Telephone Co., county of Rensselaer, city of Troy.....	70,000 00
Commercial Union Telephone Co., county of Warren:	
Town of Caldwell.	1,500 00
Town of Queensbury.	25,450 00
Town of Warrensburg	1,600 00

Names of Relators and Tax Districts.	Assessed Valuations.
Commercial Union Telephone Co., county of Saratoga:	
Town of Malta.	\$4,550 00
Town of Milton.	2,350 00
Town of Saratoga Springs	16,000 00
Town of Saratoga.	3,600 00
Town of Stillwater.	3,200 00
Town of Wilton.	2,600 00
Inter-State Telephone Co., county of Herkimer, city of Little Falls	13,950 00
Newburgh Home Telephone Co., county of Orange, city of Newburgh.	28,000 00
Dunkirk Home Telephone Co., county of Chautauqua, city of Dunkirk.	10,500 00
Elmira Water, Light & R. R. Co., county of Chemung, town of Elmira.	12,000 00
American Telephone & Telegraph Co., county of Oneida, city of Utica.	7,200 00
New York Central & Hudson River R. R. Co., county of Oneida, city of Utica.	35,000 00
Buffalo & Lake Erie Traction Co., county of Chautauqua:	
Town of Pomfret.	55,000 00
Town of Portland.	15,000 00
Town of Ripley.	30,000 00
Town of Westfield.	16,000 00
New York Central & Hudson River R. R. Co., county of Oneida, city of Rome	12,000 00
Inter Ocean Telephone & Telegraph Co., county of Erie, town of Aurora.	11,300 00
Westchester Lighting Co., county of Westchester:	
Town of Pelham.	166,200 00
Town of Mamaroneck.	201,600 00
Town of Eastchester.	45,000 00
Town of Rye.	351,900 00
Town of Harrison.	14,200 00
Town of New Castle	21,100 00
Town of White Plains	155,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Buffalo & Lake Erie Traction Co., county of Erie:	
Town of Hamburg	\$65,700 00
Town of West Seneca	125,000 00
Tarrytown, White Plains & Mamaroneck Railway Co., county of Westchester:	
Town of White Plains	106,500 00
Town of Mamaroneck.	53,800 00
Town of Scarsdale.	47,500 00
Town of Harrison.	22,000 00
New York, Westchester & Connecticut Traction Co., county of Westchester, town of Eastchester	20,000 00
Westchester Electric Railroad Co., county of Westchester, to of Eastchester.	90,000 00
Edenwald Street Railway Co., county of Westchester, town of Eastchester.	1,500 00
American Telephone & Telegraph Co., county of Dutchess, city of Poughkeepsie.	6,100 00
Inter-Ocean Telephone & Telegraph Co., county of Orleans, town of Murray.	7,000 00
Schenectady Railway Co., county of Saratoga, town of Milton.	35,000 00
Schenectady Railway Co., county of Albany, town of Colonie	235,000 00
Schenectady Railway Co., county of Schenectady, town of Niskayuna	94,000 00
New England Telegraph Co., county of Westchester, town of Scarsdale	4,200 00
New England Telegraph Co., county of Albany, town of Colonie	8,850 00
New England Telegraph Co., county of Cattaraugus, town of Allegany	7,325 00
New England Telegraph Co., county of Chautauqua, city of Dunkirk	2,725 00
New England Telegraph Co., county of Chautauqua, town of Sheridan	3,900 00
New England Telegraph Co., county of Chemung, city of Elmira	2,750 00

Names of Relators and Tax Districts.	Assessed Valuations.
New England Telegraph Co., county of Columbia, town of Chatham	\$4,825 00
New England Telegraph Co., county of Columbia, town of Ghent	4,500 00
New England Telegraph Co., county of Erie, town of Amherst	9,150 00
New England Telegraph Co., county of Jeffer- son, town of Clayton	3,175 00
New England Telegraph Co., county of Madison, town of Lenox	5,025 00
New England Telegraph Co., county of Mont- gomery, town of Florida	6,400 00
New England Telegraph Co., county of Mont- gomery, town of Glen	5,600 00
New England Telegraph Co., county of Niagara, town of Royalton	5,275 00
New England Telegraph Co., county of Oneida, town of Verona	6,650 00
New England Telegraph Co., county of Onon- daga, town of Lysander	6,500 00
New England Telegraph Co., county of Onon- daga, city of Syracuse	8,525 00
New England Telegraph Co., county of Orange, town of Walkill	7,275 00
New England Telegraph Co., county of Orleans, town of Murray	4,825 00
New England Telegraph Co., county of Rensse- laer, city of Troy	4,550 00
New England Telegraph Co., county of Orleans, town of Ridgeway	5,525 00
New England Telegraph Co., county of Schenec- tady, city of Schenectady	4,950 00
New England Telegraph Co., county of Seneca, town of Waterloo	3,650 00
New England Telegraph Co., county of Ulster, town of Esopus	4,000 00
New England Telegraph Co., county of Ulster, town of Saugerties	4,600 00

Names of Relators and Tax Districts.	Assessed Valuations.
New England Telegraph Co., county of Ulster, town of Ulster	\$4,875 00
New England Telegraph Co., county of West- chester, town of Greenburg	8,700 00
New England Telegraph Co., county of West- chester, town of Harrison	4,375 00
Poughkeepsie City & Wappinger Falls Electric Railway Co., county of Dutchess:	
City of Poughkeepsie	125,000 00
Town of Poughkeepsie	65,000 00
Utica & Mohawk Valley Railway Co., county of Oneida:	
City of Utica	650,000 00
Town of Whitestown	125,000 00
United Traction Co., county of Albany, town of Colonie	100,000 00
Cohoes Railway Co., county of Albany, town of Colonie	20,000 00
Green Island Water Supply Co., county of Albany, town of Colonie	2,500 00
New York Central & Hudson River Railroad Co., county of Montgomery, town of Minden .	59,000 00
New York Central & Hudson River Railroad Co., county of Ulster, city of Kingston	16,500 00
American Telephone & Telegraph Co., county of Chemung, city of Elmira	6,000 00
American Telephone & Telegraph Co., county of Broome, city of Binghamton	5,250 00
Kingston Consolidated Railway Co., county of Ulster, city of Kingston	160,000 00
Ellenville Electric Co., county of Ulster, town of Wawarsing	8,000 00
Elmira Water, Light & Railroad Co., county of Chemung, city of Elmira	630,000 00
Chemung County Gas Co., county of Chemung, city of Elmira	250,000 00
Independent Union Telephone Co., county of Albany, town of Colonie	5,675 00

Names of Relators and Tax Districts.	Assessed Valuations.
Independent Union Telephone Co., county of Montgomery:	
Town of Florida	\$4,800 00
Town of Palatine.....	3,250 00
Independent Union Telephone Co., county of Onondaga:	
Town of Royalton	7,125 00
Town of Wheatfield	5,000 00
Independent Union Telephone Co., county of Orleans:	
Town of Shelby	3,050 00
Town of Ridgeway	7,700 00
Independent Union Telephone Co., county of Saratoga, town of Clifton Park	2,250 00
Independent Union Telephone Co., county of Schenectady, town of Glenville.....	5,650 00
Adirondack Home Telephone Co., county of St. Lawrence, town of Potsdam	10,000 00
Adirondack Home Telephone Co., county of Franklin, town of Malone.....	7,000 00
Batavia Home Telephone Co., county of Genesee, town of Batavia.....	11,000 00
Citizens Standard Telephone Co., county of Ulster, city of Kingston.....	25,000 00
Clinton Telephone Co., county of Clinton, town of Plattsburg	3,200 00
Cohoes-Waterford Home Telephone Co., county of Saratoga, town of Clifton Park	180 00
Commercial Union Telephone Co., county of Washington, town of Kingsbury.....	4,000 00
Commercial Union Telephone Co., county of Rensselaer:	
Town of Brunswick.	6,315 00
Town of Pittstown	3,875 00
Town of Schaghticoke.	7,650 00
Home Telephone Co., county of Otsego, town of Oneonta.	16,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Oneonta Light & Power Co., county of Otsego, town of Oneonta	\$25,000 00
Rawson Electric Co., county of Wyoming, town of Warsaw	3,250 00
Seneca County Home Telephone Co., county of Seneca:	
Town of Seneca Falls	8,000 00
Town of Waterloo.	4,500 00
West Shore Home Telephone Co., county of Greene, town of Catskill.....	12,500 00
Dutchess County Telephone Co., county of Dutchess, city of Poughkeepsie.....	32,500 00
New York Central & Hudson River R. R. Co., county of Herkimer, town of Herkimer.....	10,000 00
Schenectady Illuminating Co., county of Sche- nectady, town of Niskayuna.....	5,600 00
Schenectady Illuminating Co., county of Albany, town of Colonie	13,500 00
Westchester Lighting Co., county of Westchester:	
Town of Bedford.	6,700 00
Town of Greenburg.	300,200 00
Town of Mt. Pleasant	50,300 00
Town of Scarsdale.	14,900 00
Citizens Water Supply Co. of Newtown, county of Nassau, town of North Hempstead.....	50,000 00
Fulton County Gas & Electric Co., county of Fulton, town of Johnstown.....	8,000 00
Albany Home Telephone Co., county of Albany, city of Albany.....	125,000 00
Schenectady Home Telephone Co., county of Schenectady, city of Schenectady.....	83,200 00
New York Central & Hudson River R. R. Co., county of Oswego, city of Fulton.....	12,000 00
New York Quotation Co., city of New York, borough of Manhattan.....	150,000 00
Hudson River Telephone Co., county of Albany, city of Albany.....	300,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Schenectady Railway Co., county of Albany, city of Albany	\$90,000 00
Schenectady Railway Co., county of Schenectady, city of Schenectady.....	775,000 00
New York & New Jersey Telephone Co., city of New York:	
Borough of Brooklyn.....	7,000,000 00
Borough of Queens.....	1,150,000 00
Borough of Richmond.....	410,000 00
New York & New Jersey Telephone Co., county of Suffolk, town of Huntington	29,100 00
New York & New Jersey Telephone Co., county of Suffolk, town of Southampton.....	47,750 00
New York & New Jersey Telephone Co., county of Nassau, town of North Hempstead.....	81,800 00
New York & New Jersey Telephone Co., county of Suffolk, town of Babylon.....	37,000 00
New York & New Jersey Telephone Co., county of Suffolk, town of Islip.....	34,900 00
New York Telephone Co., city of New York:	
Borough of Manhattan.	25,237,000 00
Borough of Bronx	1,975,000 00
Borough of Richmond.....	85,000 00
Borough of Brooklyn.	94,000 00
Borough of Queens.	9,000 00
Empire City Subway Co., Ltd., city of New York:	
Borough of Manhattan.	6,690,000 00
Borough of Bronx.	1,150,000 00
American Telephone & Telegraph Co., county of Schenectady, city of Schenectady.....	6,900 00
Municipal Gas Co., county of Albany, city of Albany.	1,090,000 00
The Capitol Railway Co., county of Albany, city of Albany	98,000 00
United Traction Co., county of Albany, city of Albany.	1,900,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
New York & New Jersey Telephone Co., county of Nassau, town of Hempstead.....	\$246,300 00
New England Telegraph Co., county of Westchester, city of New Rochelle.....	2,150 00
New England Telegraph Co., county of Albany, city of Albany.....	8,850 00
Tarrytown, White Plains & Mamaroneck Railway Co., county of Westchester, town of Greenburg	107,000 00
New England Telegraph Co., county of Westchester, city of Mt. Vernon	900 00
Westchester Electric Railroad Co., county of Westchester, city of New Rochelle	210,000 00
New England Telegraph Co., county of Westchester, city of Yonkers.....	16,080 00
Westchester Electric R. R. Co., county of Westchester, city of Mt. Vernon.....	301,000 00
The Troy Union R. R. Co., county of Rensselaer, city of Troy.....	125,000 00
Westchester Electric R. R. Co., county of Westchester, city of Yonkers.....	38,000 00
New York & Richmond Gas Co., city of New York, borough of Richmond.....	300,000 00
Yonkers R. R. Co., county of Westchester, city of Yonkers	800,000 00
Glens Falls Gas & Electric Light Co., county of Warren, towns of Glens Falls and Moreau...	61,000 00
Yonkers R. R. Co., county of Westchester, town of Greenburgh	30,000 00
New York Central & Hudson River R. R. Co., city of New York, borough of Manhattan....	2,400,000 00
New York Interurban Water Co., county of Westchester, city of Mt. Vernon.....	255,000 00
New York Central & Hudson River R. R. Co., city of New York, borough of Bronx.....	150,000 00
Skaneateles R. R. Co., county of Onondaga, town of Skaneateles.....	3,500 00

Names of Relators and Tax Districts.	Assessed Valuations.
Catskill Mountain Railway Co., county of Greene, town of Catskill	\$15,000 00
New York & New Jersey Telephone Co., county of Nassau, town of Oyster Bay.....	89,600 00
Consolidated Water Company of Suburban, N. Y., county of Westchester:	
Town of Greenburgh	175,000 00
Town of Mt. Pleasant	67,000 00
Westchester Lighting Co., county of Westchester, city of Mt. Vernon	700,300 00
Westchester Lighting Co., county of Westchester, city of Yonkers.....	700,000 00
Yonkers Electric Light & Power Co., county of Westchester, city of Yonkers.....	220,470 00
New York Central & Hudson River R. R. Co., county of Westchester, city of Yonkers.....	140,400 00
New York Central & Hudson River R. R. Co., county of Westchester, city of Mt. Vernon..	18,600 00
Queens County Water Co., county of Nassau, town of Hempstead.....	160,000 00
American Telephone & Telegraph Co., county of Albany, city of Albany.....	12,000 00
Hudson River Bridge Co., and New York Central & Hudson River R. R. Co., county of Albany, city of Albany.....	119,400 00
New York Central & Hudson River R. R. Co., county of Albany, city of Albany.....	242,600 00
New York City Railway Co., county of Westchester, city of Mt. Vernon	40,000 00
New York, Westchester & Connecticut Traction Co., county of Westchester, city of New Rochelle.	20,000 00
New York, Westchester & Connecticut Traction Co., county of Westchester, city of Mt. Vernon.	35,000 00
New York Inter-Urban Water Co., New Rochelle.	35,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Westchester Electric Railroad Co., Pelham....	\$45,000 00
New York Westchester and Connecticut Traction Co., Pelham.....	8,000 00

CERTIORARI PROCEEDINGS PENDING.

1900.

Names of Relators and Tax Districts.	Assessed Valuations.
Commercial Cable & Telegraph Co., city of Ithaca, Tompkins county	\$400 00
Commercial Cable & Telegraph Co., boroughs of Bronx, Brooklyn and Manhattan	297,500 00
Commercial Cable & Telegraph Co., city of Gloversville, Fulton county	1,500 00
Commercial Cable & Telegraph Co., city of Jamestown, Chautauqua county	1,260 00
Commercial Cable Co., boroughs of Brooklyn and Manhattan	84,047 00
New York Central & Hudson River Railroad Co., city of Lockport, Niagara county	40,100 00
New York Central & Hudson River Railroad Co., city of Oswego, Oswego county	117,498 00
New York Central & Hudson River Railroad Co., city of Rome, Oneida county	48,000 00
New York Central & Hudson River Railroad Co., city of Schenectady, Schenectady county.	141,600 00
New York Central & Hudson River Railroad Co., city of Yonkers, Westchester county	142,000 00
New York Central & Hudson River Railroad Co., highway crossings in counties of Albany, Cayuga, Columbia, Dutchess, Erie, Franklin, Genesee, Greene, Herkimer, Jefferson, Lewis, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Rensselaer, Rockland, Schenectady, St. Lawrence, Schuyler, Ulster and Westchester	294,086 00

Names of Relators and Tax Districts.	Assessed Valuations.
Western Union Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond	\$454,546 00
Huntington Railroad Co., town of Huntington, Suffolk county	17,500 00
Commercial Cable & Telegraph Co., city of Rochester, Monroe county	10,000 00
Delaware, Lackawanna & Western Railroad Co., highway crossings in counties of Broome, Che- mung, Chenango, Genesee, Herkimer, Living- ston, Madison, Oneida, Onondaga, Oswego, Otsego, Steuben, Tioga and Tompkins	106,569 00
New York, Lackawanna & Western Railway Co., town of Alden, Erie county	2,500 00
Commercial Cable & Telegraph Co., city of Albany, Albany county	8,950 00
New York Central & Hudson River Railroad Co., town of Canajoharie, Montgomery county	20,000 00
New England Telegraph Co., city of Jamestown, Chautauqua county	2,360 00
New England Telegraph Co., city of Albany, Albany county	8,600 00
New England Telegraph Co., city of Schenec- tady, Schenectady county	1,300 00
New England Telegraph Co., city of Auburn, Cayuga county	1,460 00
New England Telegraph Co., city of Gloversville, Fulton county	1,150 00
New England Telegraph Co., city of Yonkers, Westchester county	10,500 00
Delaware, Lackawanna & Western Railroad Co., city of Buffalo, Erie county	158,500 00
Western Union Telegraph Co., boroughs of Brooklyn, Manhattan, Queens and Richmond.	462,625 00
New England Telegraph Co., boroughs of Bronx, Brooklyn and Manhattan	231,500 00

Names of Relators and Tax Districts.	Assessed Valuations.
Commercial Cable Co., borough of Brooklyn and Manhattan	\$104,000 00
Western Union Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond	475,825 00
New England Telegraph Co., city of Gloversville, Fulton county	950 00
New England Telegraph Co., city of Jamestown, Chautauqua county	2,360 00
New England Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond.	216,900 00
New England Telegraph Co., town of Wolcott, Wayne county	3,000 00
New England Telegraph Co., town of Waterloo, Seneca county	2,100 00
New England Telegraph Co., town of Rose, Wayne county	2,500 00
New England Telegraph Co., town of Green- burg, Westchester county.	6,200 00
New England Telegraph Co., town of Stillwater, Saratoga county	1,100 00
New England Telegraph Co., town of Harrison, Westchester county	3,700 00
New England Telegraph Co., city of Yonkers, Westchester county	12,000 00
New England Telegraph Co., town of Mama- roneck, Westchester county	2,800 00
New England Telegraph Co., town of Ghent, Columbia county	2,900 00
New England Telegraph Co., city of Albany, Albany county	8,600 00
John B. McDonald, borough of Bronx	5,000 00
Commercial Cable Co., boroughs of Brooklyn and Manhattan	97,000 00
New England Telegraph Co., town of Milo, Yates county	900 00

1903.

Names of Relators and Tax Districts.	Assessed Valuations.
New England Telegraph Co., city of Jamestown, Chautauqua county	\$2,360 00
New England Telegraph Co., city of Gloversville, Fulton county	900 00
New England Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond	220,900 00
New England Telegraph Co., city of Albany, Albany county	8,600 00
New England Telegraph Co., city of Yonkers, Westchester county	11,500 00
Crystal Water Company of Edgewater, borough of Richmond	125,000 00
Commercial Cable Co., boroughs of Brooklyn and Manhattan	97,000 00
Western Union Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond	492,925 00
John B. McDonald, borough of Bronx.....	5,000 00
Edward McCreary and Michael D. Powers, city of Cohoes, Albany county.....	5,000 00

1904.

New England Telegraph Co., city of James- town, Chautauqua county.....	\$2,360 00
New England Telegraph Co., city of Gloversville, Fulton county	900 00
New England Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond.	226,800 00
New England Telegraph Co., city of Albany, Albany county	8,600 00
New England Telegraph Co., city of Yonkers, Westchester county	11,500 00
Western Union Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond.	524,700 00

Names of Relators and Tax Districts.	Assessed Valuations.
John B. McDonald, borough of Bronx.....	\$12,500 00
Commercial Cable Co., boroughs of Brooklyn and Manhattan	102,000 00
New York Central & Hudson River R. R. Co., town of Canajoharie, Montgomery county....	15,500 00

1905.

New England Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond.	\$231,800 00
New England Telegraph Co., city of Albany, Albany county	8,600 00
New England Telegraph Co., city of Yonkers, Westchester county	12,000 00
Pennsylvania Gas Co., city of Jamestown, Chau- tauqua county	199,000 00
New England Telegraph Co., city of Jamestown, Chautauqua county.....	2,360 00
Western Union Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond	571,500 00
Commercial Cable Co., boroughs of Brooklyn and Manhattan	102,000 00

1906.

New England Telegraph Co., city of Jamestown, Chautauqua county	\$2,360 00
New England Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond.	231,800 00
Commercial Cable Co., boroughs of Brooklyn and Manhattan	131,000 00
Western Union Telegraph Co., boroughs of Bronx, Brooklyn, Manhattan, Queens and Richmond.	571,500 00
Interborough Rapid Transit Co., borough of Manhattan.	18,000,000 00
Bush Terminal Railroad Co., borough of Brook- lyn.	125,000 00

Names of Relators and Tax Districts.	Assessed Valuations.
Williams Terminal Railway Co., borough of	
Brooklyn	\$4,000 00
Brooklyn Union Gas Co., borough of Brooklyn.	15,600,000 00
Manhattan Railway Co., boroughs of Bronx and	
Manhattan	62,700,000 00
New York Central & Hudson River Railroad	
Co., town of Canajoharie, Montgomery county	40,000 00
New York Central & Hudson River Railroad	
Co., town of Manlius, Onondaga county....	12,000 00
New York Central & Hudson River Railroad	
Co., city of Syracuse, Onondaga county.....	977,225 00
Peter Cooper's Glue Factory, borough of Brook-	
lyn	500 00
Yonkers Electric Light & Power Co., city of	
Yonkers, Westchester county	161,200 00
American Telephone & Telegraph Co., city of	
Albany, Albany county	10,000 00
New England Telegraph Co., city of Albany,	
Albany county	8,600 00
New England Telegraph Co., city of Yonkers,	
Westchester county	15,400 00

REFERENCES PENDING.

Name of relator.	Year.
Standard Gas Light Company.....	1900
Standard Gas Light Company.....	1902
Standard Gas Light Company.....	1903
Standard Gas Light Company.....	1904
Standard Gas Light Company.....	1905
Standard Gas Light Company.....	1906
Consolidated Gas Company.....	1901
Consolidated Gas Company.....	1902
Consolidated Gas Company.....	1903
Consolidated Gas Company.....	1904
Consolidated Gas Company.....	1905

Name of relator.	Year.
Consolidated Gas Company.....	1908
New York Mutual Gas Light Co.....	1900
New York Mutual Gas Light Co.....	1901
New York Mutual Gas Light Co.....	1902
New York Mutual Gas Light Co.....	1903
New York Mutual Gas Light Co.....	1904
New York Mutual Gas Light Co.....	1905
New York Mutual Gas Light Co.....	1906
New Amsterdam Gas Company.....	1901
New Amsterdam Gas Company.....	1902
New Amsterdam Gas Company.....	1903
New Amsterdam Gas Company.....	1904
New Amsterdam Gas Company.....	1905
New Amsterdam Gas Company.....	1906
Central Union Gas Company.....	1901
Central Union Gas Company.....	1902
Central Union Gas Company.....	1903
Central Union Gas Company.....	1904
Central Union Gas Company.....	1905
Central Union Gas Company.....	1906
Northern Union Gas Company.....	1901
Northern Union Gas Company.....	1902
Northern Union Gas Company.....	1903
Northern Union Gas Company.....	1904
Northern Union Gas Company.....	1905
Northern Union Gas Company.....	1906
Christopher & Tenth Streets R. R. Company.....	1901
Christopher & Tenth Streets R. R. Company.....	1902
Christopher & Tenth Streets R. R. Company.....	1903
Christopher & Tenth Streets R. R. Company.....	1904
Christopher & Tenth Streets R. R. Company.....	1905
Christopher & Tenth Streets R. R. Company.....	1906
New York & Harlem R. R. Company.....	1901
New York & Harlem R. R. Company.....	1902
New York & Harlem R. R. Company.....	1903
New York & Harlem R. R. Company.....	1904
New York & Harlem R. R. Company.....	1905

Name of relator.	Year.
New York & Harlem R. R. Company.....	1906
Eighth Avenue R. R. Company.....	1901
Eighth Avenue R. R. Company.....	1902
Eighth Avenue R. R. Company.....	1903
Eighth Avenue R. R. Company.....	1904
Eighth Avenue R. R. Company.....	1905
Eighth Avenue R. R. Company.....	1906
Bleecker Street & Fulton Ferry R. R. Company.....	1901
Bleecker Street & Fulton Ferry R. R. Company.....	1902
Bleecker Street & Fulton Ferry R. R. Company.....	1903
Bleecker Street & Fulton Ferry R. R. Company.....	1904
Bleecker Street & Fulton Ferry R. R. Company.....	1905
Bleecker Street & Fulton Ferry R. R. Company.....	1906
Thirty-fourth Street Crosstown Railway Company.....	1901
Thirty-fourth Street Crosstown Railway Company.....	1902
Thirty-fourth Street Crosstown Railway Company.....	1903
Thirty-fourth Street Crosstown Railway Company.....	1904
Thirty-fourth Street Crosstown Railway Company.....	1905
Thirty-fourth Street Crosstown Railway Company.....	1906
Dry Dock, East Broadway & Battery R. R. Co.....	1901
Dry Dock, East Broadway & Battery R. R. Co.....	1902
Dry Dock, East Broadway & Battery R. R. Co.....	1903
Dry Dock, East Broadway & Battery R. R. Co.....	1904
Dry Dock, East Broadway & Battery R. R. Co.....	1905
Dry Dock, East Broadway & Battery R. R. Co.....	1906
Twenty-eighth and Twenty-ninth Streets Crosstown R. R. Co.....	1901
Twenty-eighth and Twenty-ninth Streets Crosstown R. R. Co.....	1902
Twenty-eighth and Twenty-ninth Streets Crosstown R. R. Co.....	1903
Twenty-eighth and Twenty-ninth Streets Crosstown R. R. Co.....	1904
Twenty-eighth and Twenty-ninth Streets Crosstown R. R. Co.....	1905
Twenty-eighth and Twenty-ninth Streets Crosstown R. R. Co.....	1906

Name of relator.	Year.
Third Avenue Railroad Company.....	1901
Third Avenue Railroad Company.....	1902
Third Avenue Railroad Company.....	1903
Third Avenue Railroad Company.....	1904
Third Avenue Railroad Company.....	1905
Third Avenue Railroad Company.....	1906
Forty-second Street, Manhattanville & St. Nicholas Avenue R. R. Co.	1901
Forty-second Street, Manhattanville & St. Nicholas Avenue R. R. Co.	1902
Forty-second Street, Manhattanville & St. Nicholas Avenue R. R. Co.	1903
Forty-second Street, Manhattanville & St. Nicholas Avenue R. R. Co.	1904
Forty-second Street, Manhattanville & St. Nicholas Avenue R. R. Co.	1905
Forty-second Street, Manhattanville & St. Nicholas Avenue R. R. Co.	1906
Central Crosstown R. R. Co.....	1902
Central Crosstown R. R. Co.....	1903
Central Crosstown R. R. Co.....	1904
Central Crosstown R. R. Co.....	1905
Central Crosstown R. R. Co.....	1906
Bronx Traction Company.....	1905
Bronx Traction Company.....	1906
Edenwald Street Railway Company.....	1906
Broadway & Seventh Avenue R. R. Co.....	1901
Broadway & Seventh Avenue R. R. Co.....	1902
Broadway & Seventh Avenue R. R. Co.....	1903
Broadway & Seventh Avenue R. R. Co.....	1904
Broadway & Seventh Avenue R. R. Co.....	1905
Broadway & Seventh Avenue R. R. Co.....	1906
Fulton Street Railroad Company.....	1901
Fulton Street Railroad Company.....	1902
Fulton Street Railroad Company.....	1903
Fulton Street Railroad Company.....	1904
Fulton Street Railroad Company.....	1905

Name of relator.	Year.
Fulton Street Railroad Company.....	1906
Union Railway Company of N. Y.....	1901
Union Railway Company of N. Y.....	1902
Union Railway Company of N. Y.....	1903
Union Railway Company of N. Y.....	1904
Union Railway Company of N. Y.....	1905
Union Railway Company of N. Y.....	1906
Westchester Electric R. R. Co. (New York).....	1902
Westchester Electric R. R. Co. (New York).....	1904
Westchester Electric R. R. Co. (New York).....	1905
Westchester Electric R. R. Co. (New York).....	1906
Central Park, North & East River R. R. Company.....	1901
Central Park, North & East River R. R. Company.....	1902
Central Park, North & East River R. R. Company.....	1903
Central Park, North & East River R. R. Company.....	1904
Central Park, North & East River R. R. Company.....	1905
Central Park, North & East River R. R. Company.....	1906
Metropolitan Street R. R. Co.....	1901
Metropolitan Street R. R. Co.....	1902
Metropolitan Street R. R. Co.....	1903
Metropolitan Street R. R. Co.....	1904
Metropolitan Street R. R. Co.....	1905
Metropolitan Street R. R. Co.....	1906
Forty-second St. & Grand St. Ferry R. R. Company....	1901
Forty-second St. & Grand St. Ferry R. R. Company....	1902
Forty-second St. & Grand St. Ferry R. R. Company....	1903
Forty-second St. & Grand St. Ferry R. R. Company....	1904
Forty-second St. & Grand St. Ferry R. R. Company....	1905
Forty-second St. & Grand St. Ferry R. R. Company....	1906
Twenty-third Street Railway Co.....	1901
Twenty-third Street Railway Co.....	1902
Twenty-third Street Railway Co.....	1903
Twenty-third Street Railway Co.....	1904
Twenty-third Street Railway Co.....	1905
Twenty-third Street Railway Co.....	1906
Ninth Avenue R. R. Co.....	1901
Ninth Avenue R. R. Co.....	1902

Name of relator.	Year.
Ninth Avenue R. R. Co.....	1903
Ninth Avenue R. R. Co.....	1904
Ninth Avenue R. R. Co.....	1905
Ninth Avenue R. R. Co.....	1906
Southern Boulevard R. R. Co.....	1901
Southern Boulevard R. R. Co.....	1902
Southern Boulevard R. R. Co.....	1904
Southern Boulevard R. R. Co.....	1905
Southern Boulevard R. R. Co.....	1906
Fort George & Eleventh Avenue R. R. Company.....	1902
Fort George & Eleventh Avenue R. R. Company.....	1903
Fort George & Eleventh Avenue R. R. Company.....	1904
Fort George & Eleventh Avenue R. R. Company.....	1905
Fort George & Eleventh Avenue R. R. Company.....	1906
Kingsbridge Railway Company.....	1902
Kingsbridge Railway Company.....	1903
Kingsbridge Railway Company.....	1904
Kingsbridge Railway Company.....	1905
Kingsbridge Railway Company.....	1906
Inter-Urban Street Railway Company.....	1903
Inter-Urban Street Railway Company.....	1904
Inter-Urban Street Railway Company.....	1905
Inter-Urban Street Railway Company.....	1906
Sixth Avenue R. R. Company.....	1901
Sixth Avenue R. R. Company.....	1902
Sixth Avenue R. R. Company.....	1903
Sixth Avenue R. R. Company.....	1904
Sixth Avenue R. R. Company.....	1905
Sixth Avenue R. R. Company.....	1906
New York, Westchester & Conn. Traction Co. (Bronx) ..	1903
New York, Westchester & Conn. Traction Co. (Bronx) ..	1904
New York, Westchester & Conn. Traction Co. (Bronx) ..	1906
New York, Westchester & Conn. Traction Co. (New York)	1905
Wall & Cortland Streets Ferries R. R. Co.....	1903
Wall & Cortland Streets Ferries R. R. Co.....	1904
Wall & Cortland Streets Ferries R. R. Co.....	1905
Wall & Cortland Streets Ferries R. R. Co.....	1906

Name of relator.	Year.
Brooklyn, Queens County & Suburban R. R. Company..	1901
Brooklyn, Queens County & Suburban R. R. Company..	1902
Brooklyn, Queens County & Suburban R. R. Company..	1903
Brooklyn, Queens County & Suburban R. R. Company..	1904
Brooklyn, Queens County & Suburban R. R. Company..	1905
Brooklyn, Queens County & Suburban R. R. Company..	1906
Yonkers R. R. Co. (New York).....	1906
Brooklyn City R. R. Company.....	1901
Brooklyn City R. R. Company.....	1902
Brooklyn City R. R. Company.....	1903
Brooklyn City R. R. Company.....	1904
Consolidated Telegraph & Electrical Subway Company..	1903
Consolidated Telegraph & Electrical Subway Company..	1904
Consolidated Telegraph & Electrical Subway Company..	1905
Consolidated Telegraph & Electrical Subway Company..	1906
United Electric Light & Power Company.....	1903
United Electric Light & Power Company.....	1904
United Electric Light & Power Company.....	1905
United Electric Light & Power Company.....	1906
Brush Electric Illuminating Company.....	1903
Brush Electric Illuminating Company.....	1904
Brush Electric Illuminating Company.....	1905
Brush Electric Illuminating Company.....	1906
New York Edison Company.....	1904
New York Edison Company.....	1905
New York Edison Company.....	1906
Coney Island & Gravesend Railway Company.....	1902
Coney Island & Gravesend Railway Company.....	1903
Coney Island & Gravesend Railway Company.....	1904
Coney Island & Gravesend Railway Company.....	1905
Coney Island & Gravesend Railway Company.....	1906
Brooklyn Union Elevated R. R. Company.....	1905
Brooklyn Union Elevated R. R. Company.....	1906
Nassau Electric R. R. Company.....	1905
Nassau Electric R. R. Company.....	1906
Queens County Water Company.....	1901
Queens County Water Company.....	1902

Name of relator.	Year.
Queens County Water Company.....	1903
Queens County Water Company.....	1904
Queens County Water Company.....	1905
Queens County Water Company.....	1906
N. Y. C. & H. R. R. R, Company (Park avenue).....	1900
N. Y. C. & H. R. R. R, Company (Park avenue).....	1901
N. Y. C. & H. R. R. R, Company (Park avenue).....	1902
N. Y. C. & H. R. R. R, Company (Park avenue).....	1903
N. Y. C. & H. R. R. R, Company (Park avenue).....	1904
N. Y. C. & H. R. R. R, Company (Park avenue).....	1905
N. Y. C. & H. R. R. R, Company (Park avenue).....	1906
Harlem River & Portchester Railroad Company.....	1903
Brooklyn Heights R. R. Company.....	1905
Brooklyn Heights R. R. Company (Brooklyn).....	1906
Brooklyn Heights R. R. Company (Queens).....	1906
Yonkers Electric Light & Power Company.....	1904
Yonkers Electric Light & Power Company.....	1905
Yonkers Electric Light & Power Company.....	1906
Edison Electric Illuminating Company of Brooklyn....	1900
Brooklyn City & Newtown Railroad Company.....	1906
Harlem River & Portchester Railroad Co.....	1903
New York Mail & Newspaper Transportation Co.....	1905
New York Mail & Newspaper Transportation Co.....	1906
Pneumatic Service Company.....	
Automatic Fire Alarm Company.....	

NEW YORK, WESTCHESTER & CONNECTICUT TRACTION COMPANY.

- 1902. New Rochelle.
- 1902. Mt. Vernon.
- 1903. Eastchester.
- 1903. New Rochelle.
- 1904. Mt. Vernon.
- 1904. Pelham.
- 1904. Eastchester.
- 1904. New Rochelle.
- 1905. New Rochelle.
- 1905. Pelham.

- 1905. Mt. Vernon.
- 1905. Eastchester.
- 1906. New Rochelle.
- 1906. Pelham.
- 1906. Mt. Vernon.
- 1906. Eastchester.

TARRYTOWN, WHITE PLAINS & MAMARONECK
RAILWAY COMPANY.

- 1901. White Plains.
- 1901. Greenburgh.
- 1901. Harrison.
- 1901. Mamaroneck.
- 1901. Scarsdale.
- 1902. Mamaroneck.
- 1902. Harrison.
- 1902. Scarsdale.
- 1902. White Plains.
- 1902. Greenburgh.
- 1903. Harrison.
- 1903. Mamaroneck.
- 1903. Tarrytown, White Plains and Mamaroneck.
- 1903. White Plains and Scarsdale.
- 1904. White Plains.
- 1904. Scarsdale.
- 1904. Mamaroneck.
- 1904. Harrison.
- 1904. Greenburgh.
- 1905. Mamaroneck.
- 1905. White Plains.
- 1905. Scarsdale.
- 1905. Greenburgh.
- 1905. Harrison.
- 1906. Mamaroneck.
- 1906. White Plains.
- 1906. Scarsdale.
- 1906. Greenburgh.
- 1906. Harrison.

YONKERS RAILROAD CO.

- 1901. Yonkers.
- 1901. Greenburgh.
- 1902. Yonkers.
- 1902. Greenburgh.
- 1903. Yonkers.
- 1903. Greenburgh.
- 1904. Yonkers.
- 1904. Greenburgh.
- 1905. Yonkers.
- 1905. Greenburgh.
- 1906. Yonkers.
- 1906. Greenburgh.

WESTCHESTER ELECTRIC RAILROAD CO

- 1901. New Rochelle.
- 1901. Mt. Vernon.
- 1901. Pelham.
- 1902. Pelham.
- 1902. New Rochelle.
- 1902. Mt. Vernon.
- 1903. Pelham.
- 1903. Eastchester.
- 1903. New Rochelle.
- 1904. Mt. Vernon.
- 1904. Pelham.
- 1904. Eastchester.
- 1904. New Rochelle.
- 1905. New Rochelle.
- 1905. Eastchester.
- 1905. Yonkers.
- 1905. Mount Vernon.
- 1906. New Rochelle.
- 1906. Eastchester.
- 1906. Mt. Vernon.

* In the following proceedings commenced during the year 1907, the assessments have been equalized to correspond to the rate at

which real property generally in each locality affected, was determined by the State Board of Equalization to be assessed. The officers of the municipality to whom the taxes are payable consented to the equalization in each case.

Names of relators and tax districts.	Equalized. assessments.
Nassau Light & Power Co.:	
Hempstead	\$22,320 00
North Hempstead	62,000 00
Oyster Bay	37,200 00
Scacliff Water Co.:	
Oyster Bay	12,400 00
Cleveland Water Co.:	
Counties of Oswego and Oneida	8,000 00
Glens Falls Gas & Electric Light Co.:	
Queensbury	40,200 00
Moreau	680 00
Cohoes Gas Light Co.:	
Cohoes	85,000 00
Fonda, Johnstown & Gloversville Railroad Co.:	
Johnstown	37,500 00
Town of Glenville	1,170 00
Syracuse Rapid Transit Railroad Co.:	
Syracuse	1,672,000 00
Elmira Water, Light & Railroad Co.:	
Town of Horseheads	81,760 00
Elmira & Seneca Lake Traction Co.:	
Town of Horseheads	2,290 00
Town of Montour	13,320 00
Town of Dix	11,840 00
Schenectady Railway Co.:	
Rotterdam	40,000 00
Glenville	19,500 00
Hudson River Telephone Co.:	
Newburgh	38,850 00
Kingston	67,811 00
Schenectady Illuminating Co.:	
Rotterdam	12,246 00

Names of relators and tax districts.	Equalized. assessments.
Port Jervis Water Works Co.:	
Deer Park	\$56,000 00
Waterford Water Works Co.:	
Waterford	19,040 00
Poughkeepsie Light, Heat & Power Co.:	
City of Poughkeepsie	140,000 00
Town of Poughkeepsie	6,120 00
Town of Hyde Park.....	3,400 00
Port Jervis Electric Light, Power Gas & Rail- road Co.:	
Port Jervis	35,000 00
New York Interurban Water Co.:	
Town of Harrison	31,200 00
Town of Mamaroneck.....	72,720 00
Town of Pelham.....	18,450 00
Town of Rye.....	11,250 00
Orange County Traction Co.:	
City of Newburgh.....	63,000 00
Town of Newburgh.....	35,000 00
Town of Montgomery.....	21,000 00
United Traction Co.:	
Waterford	22,848 00
Clinton Telephone Co.:	
Plattsburg	6,500 00
Hudson River Telephone Co.:	
Town of Greenwich.	7,987 50
Town of Fort Edward	6,600 00
Town of Catskill.	12,474 00
Town of Saugerties.	12,657 50
Town of Colonie.	32,575 00
Town of Hoosick.	11,810 50
Town of Poestenkill.	2,133 00
Town of Brunswick.	2,488 50
Town of Bedford.	11,947 50
Town of Caldwell.	5,100 00
Town of Bolton.	4,220 00
Town of Ghent.	1,840 00

Names of relators and tax districts.	Equalized. assessments.
Town of Germantown.	\$2,060 00
Town of Mooers.	2,487 75
Town of Champlain.	2,250 00
Town of Saranac.	1,950 00
Town of Black Brook.	1,887 50
Town of Chazy.	1,237 50
Town of Deer Park	4,200 00
Town of Lloyd.	4,710 25
Town of New Paltz	4,223 00
Newburgh Home Telephone Co., Newburgh. . . .	19,600 00
Elmira Water, Light & Railroad Co., town of Elmira.	79,350 00
Schenectady Railway Co.:	
Town of Milton.	23,800 00
Town of Colonie.	220,000 00
Poughkeepsie City & Wappingers Falls Electric Railway Co.:	
City of Poughkeepsie.	100,000 00
Town of Poughkeepsie.	65,000 00
Utica & Mohawk Valley Railway Co., city of Utica, town of Whitestone	526,500 00
Elmira Water, Light & Railroad Co., Elmira. .	77,380 00
Chemung County Gas Co., Elmira.	182,500 00
Independent Union Telephone Co., Glenville. .	4,407 00
Adirondack Home Telephone Co., Malone. . . .	4,550 00
Batavia Home Telephone Co., town of Batavia. .	7,920 00
Citizens Standard Telephone Co., Kingston. . .	20,750 00
Commercial Union Telephone Co., Kingsbury. .	2,920 00
Home Telephone Co., Oneonta.	12,000 00
Oneonta Light & Power Co., town of Oneonta. .	18,500 00
Schenectady Illuminating Co., Niskayuna. . . .	10,530 00
Albany Home Telephone Co., Albany.	106,250 00
Schenectady Home Telephone Co., Schenectady. .	64,896 00
Hudson River Telephone Co., Albany.	255,212 50
Schenectady Railway Co.:	
Albany	76,000 00
Schenectady	604,000 00

Names of relators and tax districts.	Equalized. assessments.
Capitol Railway Co., Albany.....	\$83,300 00
United Traction Co., Albany.....	1,615,000 00
Skaneateles Railroad Co., Skaneateles.....	2,950 00
Catskill Mountain Railway Co.....	10,800 00
Commercial Union Telephone Co.:	
Town of Malta.	3,094 00
Town of Milton.	1,598 00
Town of Saratoga Springs	10,880 00
Town of Saratoga.	2,448 00
Town of Stillwater.	2,176 00
Town of Wilton...	1,768 00
West Shore Home Telephone Co., Catskill.....	9,000 00
Adirondack Home Telephone Co., Potsdam....	8,500 00
Independent Union Telephone Co., Clifton Park.	1,530 00
Ithaca Street Railway Co.....	51,000 00
Fonda, Johnstown & Gloversville R. R. Co....	23,250 00
Johnstown, Gloversville & Kingsboro Horse R. R. Co.	27,000 00
Hudson Valley Railway Co.:	
Washington county	74,460 00
Saratoga county	93,868 00
Warren county	62,310 00
Cohoes Gas Light Co., Waterford.....	6,800 00
Cohoes-Waterford Home Telephone Co. (Cohoes)	19,550 00
Schenectady Railway Co.:	
Niskayuna.	84,000 00
Watervliet.	72,250 00
Cohoes Railway Co., Cohoes.....	70,550 00
United Traction Co.:	
Cohoes.	108,000 00
Watervliet.	97,070 00
New York Interurban Water Co., Mt. Vernon..	226,950 00
Independent Union Telephone Co.:	
Ridgeway.	5,929 00
Shelley.	2,348 50
Colonie.	4,823 75
Dunkirk Home Telephone Co., Dunkirk.....	9,450 00

Names of relators and tax districts.	Equalized. assessments.
Watervliet-Green Island Home Telephone Co.:	
Watervliet.	\$8,075 00
Green Island	1,317 05

Referees were appointed in the following proceedings begun during the year 1907:

Names of relators and tax districts.
Cataract Power & Conduit Co., Buffalo.
Western Union Telegraph Co., Buffalo.
New York Central & Hudson River Railroad Co., Buffalo.
Frontier Telephone Co., Buffalo.
Buffalo Natural Gas Fuel Co., Buffalo.
New York Transit Co., Buffalo.
Buffalo General Electric Co., Buffalo.
Delaware, Lackawana & Western Railroad Co., Buffalo.
Buffalo Gas Co., Buffalo.
People's Gas Light & Coke Co., Buffalo.
Erie Railroad Co., Buffalo.
Automatic Fire Alarm Co., New York city.
Jamaica Water Supply Co., New York city.
Ithaca Telephone Co., Ithaca.
Inter-Ocean Telephone & Telegraph Co., Rochester.
Hudson Valley Railway Co., Washington, Saratoga and Warren counties.
Hornellsville Telephone Co., Hornell.
Buffalo & Williamsville Electric Railway Co., Batavia.
New York Mail & Newspaper Transportation Co., New York city.
Pneumatic Service Co., New York.
Crystal City Gas Co., Corning.
Lockport Hydraulic Co., Lockport.
Corning and Painted Post Street Railroad Co., Corning.
Niagara Gorge Railroad Co.
Livingston & Youngstown Frontier Railway Co., Niagara county.

Names of relators and tax districts.

New York Central & Hudson River Railroad Co., Syracuse.
Municipal Gas Co., Watervliet.
Municipal Gas Co., Albany.
New York Central & Hudson River Railroad Co., North
Tonawanda.
Inter-Ocean Telephone & Telegraph Co.:
 Town of Aurora.
 Town of Murray.
Second Avenue Railroad Co.
3d Avenue Railroad Co.
23d Street Railway Co.
Central Crosstown Railroad Co.
Christopher & Tenth Streets Railroad Co.
42d St., Manhattanville & St. Nicholas Ave. Railroad Co.
Dry Dock, East Broadway & Battery Railroad Co.
Kings Bridge Railway Co.
34th Street Crosstown Railway Co.
Fulton Street Railroad Co.
28th and 29th Streets Crosstown Railroad Co.
Fort George & 11th Avenue Railroad Co.
Wall & Cortland Streets Ferries Railway Co.
Union Railway Co. of New York city.
Westchester Electric Railway Co.
Yonkers Railroad Co.
New York, Westchester & Connecticut Traction Co.
Bronx Traction Co.
Edenwald Street Railway Co.
Southern Boulevard Railway Co.
Metropolitan Street Railway Co.
Bleecker Street and Fulton Ferry Railroad Co.
Broadway and 7th Avenue Railroad Co.
Central Park, North and East River Railroad Co.
8th Avenue Railroad Co.
42d Street and Grand Street Ferry Railroad Co.
9th Avenue Railroad Co.
New York & Harlem Railroad Co.

Names of relators and tax districts.

6th Avenue Railroad Co.
 New York Edison Co.
 Brush Electric Illuminating Co.
 United Electric Light & Power Co.
 Consolidated Telegraph & Electrical Subway Co.
 Consolidated Gas Co.
 Northern Union Gas Co.
 Central Union Gas Co.
 New Amsterdam Gas Co.
 Standard Gas Light Co. of the City of New York.
 Westchester Lighting Co.
 Stock Quotation Co.
 New York Central & Hudson River Railroad Co., Park avenue.
 Tarrytown, White Plains & Mamaroneck Railway Co.
 New York, Westchester & Connecticut Traction Co.
 Manhattan Railway Co.

Proceedings in which municipalities have intervened:

Western Union Telegraph Co.	Buffalo.
New York Central & Hudson River Railroad Co....	Buffalo.
Frontier Telephone Co.	Buffalo.
Buffalo Natural Gas Fuel Co.	Buffalo.
New York Transit Co.	Buffalo.
Buffalo General Electric Co.	Buffalo.
D., L. & W. Railroad Co.	Buffalo.
Buffalo Gas Co.	Buffalo.
People's Gas Light & Coke Co.	Buffalo.
American Telephone & Telegraph Co.	Buffalo.
Erie Railroad Co.	Buffalo.
New England Telegraph Co.	Rochester.
Rochester District Telegraph Co.	Rochester.
Commercial Cable & Telegraph Co.	Rochester.
Troy Gas Co.	Troy.
United Traction Co.	Troy.
Hudson River Telephone Co.	Troy.
Commercial Union Telephone Co.	Troy.

In the following proceedings the assessments were sustained by referees:

Jamaica Water Supply Co.	1907.
Brooklyn City Railroad Co.	1901-2-3-4.
Brooklyn, Queens County & Suburban Railroad Co.	1901-2-3-4.

The proceedings of the Lavonia Salt & Mining Company was cancelled and that of the Interborough Rapid Transit Company was also cancelled by order of the court. From the decision in the latter case an appeal has been taken to the Appellate Division of the Supreme Court.

The proceedings of the Crosstown Street Railway Company of Buffalo, International Railway Company of Buffalo, Green Island Water Supply Company, Rawson Electric Company, Seneca County Home Telephone Co., Rochester Railway & Light Company, Western Union Telegraph Company of Buffalo, and the Rochester Gas & Electric Company of Buffalo, were discontinued.

CONDITION OF NEW YORK CITY REFERENCES.

After five hearings in each case have been had, I have received notice that the Brooklyn City & Newtown Railroad Co. and the Coney Island & Brooklyn Railroad Co. will discontinue their proceedings and pay their taxes upon the basis of equalized value for real property in Kings county.

The same disposition will be made in the matters of the United Electric Light & Power Co. and the Brush Electric Illuminating Co.

In detail, the following disposition has been made of other cases:

1. Standard Gas Light Co.
2. The Consolidated Gas Co.
3. The New Amsterdam Gas Co.
4. The Central Union Gas Co.
5. The Northern Union Gas Co. (These matters are all being tried before the Hon. Wm. A. Keener and the trials have now reached a point where it seems likely that the assessments will all be settled upon the equalized rate.)

6. New York Mutual Gas Light Co. (This case is being tried before Mr. Keener.)
7. 3d Avenue Railroad Co. (This is the largest individual railroad company proceeding and the trial has been held before Honorable Ernest Hall, referee, has been fully submitted to him and briefs filed. I expect a report of the referee daily.)
8. Dry Dock, East Broadway & Battery Railroad Co.
9. 42d Street, Manhattanville & St. Nicholas Avenue Railroad Co. (These two companies are part of the 3d avenue railroad system and the decision in the latter case will determine the basis upon which their assessments should be made.)
10. Christopher & 10th Street Railroad Co.
- 11. New York & Harlem Railroad Co.
12. Bleecker Street & Fulton Ferry Railroad Co.
13. 8th Avenue Railway Co.
14. 3d Avenue Railway Co.
15. Central Crosstown Railroad Co.
16. Broadway & 7th Avenue Railroad Co.
17. Central Park, North & East River Railroad Co.
18. Metropolitan Street Railway Co.
19. 42d Street & Grand Street Ferry Railroad Co.
20. 23d Street Railroad Co.
21. 9th Avenue Railroad Co.
22. 6th Avenue Railroad Co.
23. 2d Avenue Railroad Co.

Hearings are being held daily in the above-entitled proceedings and a great mass of testimony has been submitted. These companies go to make up what is known as the Metropolitan System and include the largest and most important of the surface lines.

24. Brooklyn, Queens County & Suburban Railroad Co.

Referee sustained the assessment in this case and a motion has been made but decision not yet rendered, asking for the confirmation of said report.

25. Brooklyn City Railroad Co.

Assessment sustained and report of referee submitted for confirmation.

26. 34th Street Crosstown Railroad Co.

27. 28th and 29th Street Railroad Co.

28. Fort George & 11th Avenue Railroad Co.

These are part of the Metropolitan System and it is likely that a determination of the questions involved in the other Metropolitan proceedings will govern the settlement of the assessments of these companies. I have made full preparation for the defense in these cases.

29. Fulton Street Railroad Co.

Hearings have been held and the proceeding is practically complete.

30. Coney Island & Gravesend Railroad Co.

A large number of hearings have been had and much testimony taken.

31. Brooklyn City Railroad Co.

For the years 1905 and 1906, on trial before the Hon. Martin Saxe.

32. Brooklyn, Queens County & Suburban Railroad Co.

On trial before referee, Hon. Martin Saxe.

33. Union Railway Co. of New York.

Am about to proceed in this matter, despite the fact that company has asked to have the proceeding held until the termination of the other Metropolitan System cases.

34. Edenwald Street Railway Co.

35. The Bronx Traction Co.

These companies have no assets except their franchise, upon which the roads have not been constructed.

36. Westchester Electric Co.

37. The Southern Boulevard Railway Co.

38. Kings Bridge Railroad Co.

These companies are part of the Union Railway Co. and the decision in that case will be binding upon them.

39. New York, Westchester & Connecticut Traction Co.

Is in the same condition.

40. Wall & Cortland Streets Ferries Railroad Co.

Has no assets save its franchise.

41. Consolidated Telegraph & Electrical Subway Co.
Testimony has been submitted and the case closed.
42. New York Edison Co.
Hearings are being daily held.
43. Brooklyn Union Elevated Railroad Co.
44. Nassau Electric Railroad Co.
Are being tried.
45. New York Central & Hudson River Railroad Co.
Hearing for the years 1900 to 1906 inclusive, are being held before the referee and several thousand pages of testimony taken.
46. Larchmont Water Co.
Hearings for the years 1900-1906 inclusive, are being held.
47. Harlem River and Port Chester Railroad Co.
Has been prepared for trial and will be proceeded with immediately.
48. Brooklyn Heights Railroad Co.
For Queens Co., hearings are being held by the referee.
49. Edison Electric & Illuminating Co. of Brooklyn.
Being tried before the referee, Hon. James G. Graham.
50. Yonkers Railroad Co.
Will be taken up with the trial of the Union Railway proceedings.
51. Automatic Fire Alarm Co.
Being tried before the referee.

TAX CASES.

The following proceedings are pending in the Court of Appeals:

PEOPLE EX REL. LONG DOCK MILLS & ELEVATOR VS. WILLIAM C. WILSON, DEPUTY AND ACTING COMPTROLLER.

Proceeding to review determination of Comptroller in assessing a franchise tax against relator. Writ issued July 17, 1906. Return filed October 6, 1906.

The following proceedings are pending in the Appellate Division, Supreme Court, Third Department:

THE PEOPLE EX REL. AMERICAN GLUCOSE CO. VS. JAMES A. ROBERTS, AS COMPTROLLER.

Proceeding to review the action of the Comptroller in assessing a franchise tax against the relator. Writ issued May 2, 1898, and return filed June 11, 1898.

THE PEOPLE EX REL. THE CITY OF NEW YORK VS. ERASTUS C. KNIGHT, AS COMPTROLLER AND THEODORE P. GILMAN, AS DEPUTY COMPTROLLER.

This is a proceeding to review the action of the Comptroller in canceling certain tax sales. Writ issued April 25, 1901. Motion made to quash writ October 26, 1901, which motion was denied.

THE PEOPLE EX REL. MANHATTAN SILK CO. VS. NATHAN L. MILLER, AS COMPTROLLER.

Proceeding to review the action of the Comptroller in assessing a franchise tax against the relator. Writ issued September 12, 1903. Return made October 6, 1903.

THE PEOPLE EX REL. CORNELL STEAMBOAT CO. VS. OTTO KELSEY, AS COMPTROLLER.

Certiorari to review action of the Comptroller in assessing a franchise tax against the relator. Writ issued October 19, 1904, and return made November 18, 1904.

THE PEOPLE EX REL. EAST RIVER RAILROAD CO. VS. NATHAN L. MILLER, AS COMPTROLLER.

Proceeding to review the action of the Comptroller in assessing a franchise tax against the relator. Writ issued May 28, 1903, and return made June 20, 1903.

THE PEOPLE EX REL. LIQUID CARBONIC ACID MANUFACTURING CO. VS. OTTO KELSEY, AS COMPTROLLER.

Proceeding to review the determination of the Comptroller in assessing a franchise tax against the relator. Writ issued July 26, 1905, and return made September 25, 1905.

THE PEOPLE EX REL. MANHATTAN SILK CO. VS. OTTO KELSEY, AS COMPTROLLER.

Proceeding to review the determination of the Comptroller in assessing a franchise tax against the relator. Writ issued October 16, 1905. Return made January 4, 1906.

THE PEOPLE EX REL. W. J. MATHEWSON CO. VS. OTTO KELSEY,
AS COMPTROLLER.

Proceeding to review the determination of the Comptroller in assessing a franchise tax against the relator. Writ issued November 25, 1905, and return made December 19, 1905.

THE PEOPLE EX REL. INTERBOROUGH RAPID TRANSIT CO. VS. OTTO KELSEY, AS COMPTROLLER OF THE STATE OF NEW YORK.

Proceedings to review the determination of the Comptroller in assessing a franchise tax against the relator. Writ issued March 30, 1906. Return filed May 22, 1906.

THE PEOPLE EX REL. NEW YORK AND HARLEM RAILROAD CO. VS. WILLIAM C. WILSON, AS ACTING COMPTROLLER OF THE STATE OF NEW YORK.

Proceeding to review the determination of the Comptroller in assessing a franchise tax against the relator. Writ issued October 9, 1906. Return made February 28, 1907.

THE PEOPLE EX REL. UNION SULPHUR COMPANY VS. MARTIN H. GLYNN, AS COMPTROLLER OF THE STATE OF NEW YORK.

Proceeding to review the determination of the Comptroller in assessing a franchise tax against the relator. Writ issued May 21, 1907. Return filed July 17, 1907.

THE PEOPLE EX REL. VANDEVOORT REALTY COMPANY VS. MARTIN H. GLYNN, AS COMPTROLLER OF THE STATE OF NEW YORK.

Proceeding to review the determination of the Comptroller in assessing a franchise tax against the relator. Writ issued August 24, 1907. Return made September 26, 1907.

THE PEOPLE EX REL. INTERBOROUGH RAPID TRANSIT COMPANY VS. STATE BOARD OF TAX COMMISSIONERS.

Appeal from an order of the Supreme Court directing the cancellation of the special franchise tax assessment against the relator for the year 1905. Notice of appeal filed October 7, 1907.

Statement reciting the present status of all actions for the dissolution of corporations, brought by the Attorney-General prior to January 1, 1907.

SUPREME COURT — ONONDAGA COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE ORAN CO-OPERATIVE CREAMERY
COMPANY.

Action commenced November 22, 1905, to dissolve defendant corporation on the ground of insolvency and also on the ground that it had ceased to carry on its lawful business for a period of more than one year.

Judgment and order appointing receiver February 7, 1906. Frederick G. Dutton, receiver. The receiver's account has been filed and passed upon, and report duly made and funds distributed by final order. The estate being closed except that authority was given by the final order to allow the receiver to commence action against the stockholders. This action was commenced but was afterward discontinued. Matter closed.

SUPREME COURT — ONTARIO COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE CANANDAIGUA WATERWORKS COM-
PANY, ET AL.

Application made to Attorney-General by F. A. Christian to dissolve corporation on grounds that it has ceased doing busi-

ness for one year. Application granted. F. A. Christian appointed to conduct proceedings. Action commenced March 12, 1906. Judgment dissolution rendered and entered July 14, 1906.

Matter closed, there being no assets of any kind.

SUPREME COURT—NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE MERCANTILE CREDIT GUARANTEE
COMPANY OF NEW YORK.

Action to dissolve corporation on ground of insolvency on recommendation of Superintendent of Banks. Judgment dissolution August 19, 1897; John M. Bowers appointed receiver. On June 14, 1902, a partial settlement of estate was made and the order provided that the receiver proceed at once to prosecute certain actions against directors of said defendant. All matters have been adjusted except two suits, one of which has been finally decided in favor of the receiver, October, 1906, and judgment paid amounting to \$51,116.88. The other action was brought by the receiver against the Ocean Accident and Guarantee Company and has been tried and decided in favor of the receiver and judgment recovered, amount \$6,656.81, from which judgment an appeal was taken to the Court of Appeals. These matters were concluded and the final order discharging the receiver was served upon the Attorney-General November 7, 1907.

SUPREME COURT — KINGS COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

REPUBLIC SAVINGS AND LOAN ASSOCIATION.

Judgment dissolving corporation was obtained and entered March 14, 1901. This action was brought on the recommendation of the Superintendent of Banks, the grounds being insolvency. Edward G. Riggs and Otto Kelsey were appointed permanent receivers. Upon application of the Attorney-General the receivers were ordered to present their final account and in accordance with the order of the court, said account was presented for final settlement December 28, 1906.

Exceptions were filed by numerous persons beneficially interested, and the matter was referred to Alexander McKinney, Esq., an attorney of Brooklyn. The hearings upon the account were numerous and exhaustive.

The hearings were brought to a termination by the suggestion on the part of the attorneys for the receivers, that the receivers were willing to enter into a stipulation waiving all claims for receiver's commissions upon the final accounting, and that the attorneys would waive all allowances for fees and disbursements claimed by them upon the final accounting, and permitting the referee to surcharge the account of the receivers approximately \$2,000.

Accordingly a stipulation to this effect was entered into by the various parties appearing upon the hearings, and on the 31st day of December, 1907, the referee filed in the county clerk's office of Kings county, his report recommending the acceptance of the terms of the stipulation as the most practical method of terminating the receivership.

The Attorney-General was confronted with innumerable difficulties and technicalities in connection with reviewing the conduct of the receivers, with respect to matters which had been

passed upon by former accountings and confirmed by orders of the court, but by the settlement agreed upon he was enabled to save to those beneficially interested a substantial sum upon the only accounting coming under the direct consideration of this administration.

SUPREME COURT — NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE FEDERAL BANK OF NEW YORK.

This action was commenced in May, 1904, on the recommendation of the State Superintendent of Banks to dissolve defendant corporation on the grounds of insolvency. Leo Schlesinger was appointed receiver June 1, 1904; judgment of dissolution December 13, 1904. On October 3, 1904, a dividend of 20 per cent. was declared; on June 18, 1906, the receiver was granted leave to make and render his account and time further to account was extended to August 1, 1907. On August 6, 1906, the account of the receiver, with vouchers was received and filed, and was duly presented to the court and confirmed without objection by order entered November 26, 1906, whereupon a further dividend of 15 per cent. was declared and paid. There was referred to Hon. Henry W. Bookstaver, September 14, 1905, a large number of disputed claims, aggregating \$232,739, all of which have been passed on and adjusted at \$33,519, except the claim of the Bankers Surety Company which has been compromised (by leave of court) by a coalition of certain of the claims of the bank therewith in a prosecution for joint benefit against those liable. This matter is still outstanding. A few exceptions to the referee's report are still undisposed of.

On August 1, 1907, the receiver's further account was filed and received with its vouchers, and an order was entered thereon

October 9, 1907, settling same as filed, barring further claims, directing a final sale of unreduced assets and ordering a final accounting August 1, 1908.

In addition, an action brought on behalf of certain of the creditors against the stockholders has resulted in a distribution of 13 per cent. to them.

Dividends aggregate 48 per cent. (including assets received in the stockholders' action.)

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

BANK OF STATEN ISLAND.

This action was brought July 24, 1904, to dissolve the defendant corporation, on the ground of insolvency, on the recommendation of the State Superintendent of Banks.

Joseph B. Mayer was appointed receiver. During the year 1905 a dividend of 30 per cent. was declared and paid. On June 19, 1906, Receiver Mayer resigned and an order was made approving and accepting his resignation. The receiver's accounts and the attorney's bill of H. S. Patten were referred to Hon. John C. Davies, as referee. Hearings upon the account of Mr. Mayer have been held from time to time during the year and are about concluded. Many requests for adjournments have been made, thus causing considerable delay in closing the accounting.

Many important matters have demanded the attention of the receiver during the year. The action against the directors, which was tried in Richmond county, resulted in a recovery being obtained by the receiver against the Augustus Prentice estate of approximately \$180,000, from which judgment an appeal has been taken.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE STATE BANK OF FORESTVILLE.

This action was commenced to dissolve the defendant corporation on the ground of insolvency on complaint of the Superintendent of Banks, June 20, 1905. Frank L. Smith was appointed receiver. The total amount of assets received was \$182,070, and the total amount of claims presented was \$133,000, on which two dividends, one of 50 per cent. and one of 20 per cent., and aggregating \$94,000, have been paid.

It is estimated by the receiver that the obligations of the defendant will be paid in full.

On December 23, 1907, application was made by the Attorney-General for an order directing the receiver to present his final account. Upon representations being made to the court that the relations of the defendant to the Fredonia National Bank, now in the hands of a Federal receiver, prevented an immediate accounting the court denied the application but without costs and with leave to renew at any time the Attorney-General so desired.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE STATE BANK OF OVID.

The action to dissolve this defendant corporation was brought upon the recommendation of the Superintendent of Banks on the

19th day of May, 1905, and Francis W. Whitwell was appointed receiver. Three dividends were paid by the receiver, aggregating 100 per cent., to the creditors and depositors. The receiver, on the 8th day of June, 1906, was discharged. Matter closed.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

HOLLAND TRUST COMPANY.

The action to dissolve the defendant corporation was commenced on the 17th day of July, 1906, on an agreement of insolvency and upon request of the Superintendent of Banks. The defendant answered on August 10, 1906. Plaintiffs demurred to the answer on August 30, 1906, and the court sustained the demurrer, and an order of dissolution was granted and entered October 23, 1906. James B. Van Woert and Samuel Bryant were appointed receivers on November 10, 1906, and their bond fixed at \$250,000. The estate is in process of liquidation.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

PLAINTIFFS,

vs.

NORTH GERMAN FIRE INSURANCE COMPANY, DEFENDANT.

This action was commenced on the 7th day of November, 1906, to dissolve the defendant corporation, upon the request of the

Superintendent of Insurance. Nathaniel A. Elsberg was appointed temporary receiver, his bond being fixed at \$200,000. On December 22, 1906, a judgment of dissolution was granted and Mr. Elsberg was appointed permanent receiver. Several important matters affecting the defendant corporation have been concluded during the year and the Attorney-General is advised that the receivership will probably be terminated within the eighteen months contemplated by statute.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

NEW YORK BUILDING LOAN-BANKING COM-
PANY.

This action was commenced December 22, 1902, to dissolve the defendant corporation on the ground of its insolvency, upon the report and recommendation of the Superintendent of Banks. Charles M. Preston, Esq., of Kingston, was appointed temporary receiver September 12, 1903, and was made permanent receiver September 24, 1904.

Intermediate accounts have been filed as follows: From September 14, 1903, to September 14, 1904; from September 14, 1904, to September 14, 1905; from September 14, 1905, to September 14, 1906, and from September 14, 1906, to September 14, 1907.

Walter S. Logan, Esq., was appointed referee to pass upon the various accounts until the time of his death in July, 1906. On September 7, 1906, Thomas F. Conway, Esq., was appointed referee in place of Walter S. Logan, deceased. Mr. Conway was also appointed referee to pass upon the fourth annual account of the receiver. The Attorney-General opposed the application of the receiver to have his fourth annual account submitted to a

referee, the Attorney-General contending that no further references should be had until the final account. The matter, however, was sent to Referee Conway, before whom it is still pending.

During the year the Court of Appeals sustained the contention of the receiver against claimants known as Class W shareholders. Several important matters affecting this estate are about to be concluded and it is expected that the receiver can present his final account early in the year 1908.

SUPREME COURT—NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

MANHATTAN FIRE INSURANCE COMPANY.

The defendant corporation was dissolved June 8, 1901, upon the request of the Superintendent of Insurance. Otto Kelsey was appointed receiver.

On March 25, 1905, upon application of the Attorney-General, an order was made directing Otto Kelsey to account as such receiver, which said account was filed May 17, 1905, and sent to Hon. Wm. M. K. Olcott. There were also referred to said referee the accounts of the attorneys for the receiver and disputed claims. On May 22, 1906, an application was made to allow the receiver to resign on the grounds that he had been appointed Superintendent of Insurance, which application was granted May 26, 1906, and Edwards P. Ward was appointed receiver in place of the said Otto Kelsey. Mr. Ward duly qualified and entered upon the discharge of his duties as such receiver.

Several important motions were made by the new receiver, including an application which was granted for the substitution of Alfred Hayes, Jr., as attorney for the receiver, in place of Messrs. Hasbrouck & Johnson. An application was also made to sur-

charge Receiver Kelsey with the sum of \$4,115.13, being an amount alleged to have been retained from funds collected by him in the jurisdiction of the Commonwealth of Virginia, and retained by the receiver or his attorney or attorneys, and not having been accounted for upon the final account. It appeared from the papers upon the motion that this amount had been deposited to the credit of the attorneys for the receiver for the purpose of meeting some alleged contingency, but Receiver Kelsey, upon learning the circumstances, readily consented to have his accounts charged with this additional amount.

Referee Olcott to whom the account of Receiver Kelsey had been referred, made his report and recommendations. Objections were made to the confirmation of the report by the Attorney-General and representatives of persons beneficially interested in the distribution of the assets. Objections and exceptions to the report of the referee were filed with the court, together with the briefs of counsel, and the court now has the matter under advisement.

Practically all the important matters connected with this receivership are completed and Receiver Ward will be ready to make his final account as soon as a final disposition is made of the account of Receiver Kelsey.

SUPREME COURT — ERIE COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE GERMAN BANK.

This action was brought, on the recommendation of the Superintendent of Banks, to dissolve the defendant corporation on the ground of insolvency.

The judgment of dissolution was obtained and entered December 21, 1904, and Albert J. Wheeler was appointed permanent

receiver. Dividends have been paid as follows: March 22, 1905, 25 per cent.; November 2, 1905, 25 per cent.

On July 29, 1907, the receiver, by his attorneys made application to compromise various actions brought against Eugene A. Georger, the former president of the defendant, and aggregating several hundred thousands of dollars, by accepting \$35,000 in full settlement and satisfaction of all claims and demands against Georger. This motion was vigorously opposed by the Attorney-General and the application was denied by the court.

Thereupon on the 21st day of September, 1907, the Attorney-General, in accordance with the request of a large percentage of persons beneficially interested in the distribution of the assets of the defendant, made an application to the court for the removal of the receiver and his attorneys and compelling the receiver forthwith to present his final account.

Upon the return day of the motion the receiver and his attorneys consented to the substitution of other attorneys, to be designated by the Attorney-General, to conduct the trials of the actions against the said Georger, which actions are now pending.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

METROPOLITAN MUTUAL SAVINGS AND LOAN
ASSOCIATION.

This action was commenced on April 26, 1902, to dissolve the defendant corporation for insolvency upon complaint of the Superintendent of Banks. Judgment of dissolution was obtained and entered June 30, 1903, and James A. Roberts, of Buffalo, was appointed receiver.

An order was obtained by the Attorney-General in 1905 to compel a final accounting, but after several adjournments the

motion was not pressed on account of the representation of the receiver that pending litigation made such an accounting impracticable.

The receiver reports that he will be ready, finally to account, in a few months.

SUPREME COURT — KINGS COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

GUARDIAN SAVINGS AND LOAN COMPANY.

Action to dissolve corporation on application of Superintendent of Banks. This action was commenced February 3, 1906.

Many complications have confronted the temporary receiver, Newell Lyon, and little progress has been made beyond the temporary steps of the receivership.

SUPREME COURT — NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

TREASURY CORPORATION CO-OPERATIVE
SAVINGS LOAN ASSOCIATION.

Action to dissolve corporation on grounds of insolvency, February 3, 1906; order appointing temporary receiver granted, also injunction order.

Many complications have confronted the temporary receiver, Newell Lyon, and little progress has been made beyond the temporary steps of the receivership.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

METROPOLITAN BANK.

Action commenced June 15, 1905, to dissolve corporation on grounds of insolvency. Notice of appearance served June 17, 1905. Answer served July 28, 1905. Matter pending.

SUPREME COURT — ERIE COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

MANHATTAN REAL ESTATE AND LOAN CO.

Action commenced May 22, 1901, to dissolve corporation upon recommendation of Superintendent of Banks. February 2, 1902, judgment of dissolution and Alfred B. Hall appointed receiver. The judgment of dissolution was reversed by the courts and receivership of Mr. Hall terminated. Complaint in action amended and secured judgment of dissolution; rendered September 30, 1903. A. Glenni Bartholomew appointed receiver. The final account of Mr. Hall, receiver, is before a referee. There are also pending several foreclosure suits and hearings before the referee on disputed claims.

Matter pending.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

COOPERSTOWN AND MOHAWK VALLEY
RAILWAY COMPANY.

August 31, 1906, action commenced to dissolve corporation. September 20, 1906, offer of judgment received. September 29, 1906, judgment of dissolution rendered and entered, appointing John R. King, receiver. The bond of receiver was duly approved and filed. The estate is in process of liquidation and is practically closed up.

SUPREME COURT — RENSSELAER COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

TROY CHEMICAL COMPANY.

Action commenced March 6, 1906, to dissolve corporation on grounds that it had suspended its lawful business for at least one year. On April 23, 1906, answer served. Said action brought on for trial. Trial had and judgment rendered and entered, dismissing complaint October 17, 1906; an appeal from which was taken, and final judgment dissolving the corporation was entered in May, 1907. No appeal has been taken. The action is therefore closed.

SUPREME COURT — KINGS COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK*vs.*THE UNITED FREEMAN'S LAND ASSOCIA-
TION No. 2.

Action for dissolution of defendant corporation.

This action was commenced July 26, 1906. An order was granted October 4, 1906, to try certain questions of fact raised by defendant's answer herein before a jury. The said facts presented and judgment of dissolution rendered and entered October 13, 1906, and L. L. Fawcett appointed receiver, who has since resigned and Theo. Frohne was appointed in his stead.

The receiver has brought an action to test his title to a certain piece of real estate. If successful in this action several parcels will come into his possession. These are the only assets of the defendant.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK*vs.*GLOBE SAVINGS AND LOAN ASSOCIATION.

November 28, 1906, action was commenced to dissolve corporation upon recommendation of Superintendent of Banks. Judgment of dissolution made and entered herein December 22, 1906. Norris L. French of the city of Buffalo, N. Y., appointed receiver, who duly qualified and filed his bond, approved by the Supreme

Court, for the faithful performance of his duties, in the sum of \$30,000.

The receiver has already paid a dividend of 30 per cent. and is about ready to file his final account, at which time this Department is advised a second dividend of 30 per cent. will probably be paid.

SUPREME COURT—SCHENECTADY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE NORTH AMERICA LIFE INSURANCE
COMPANY.

On petition presented showing assets not yet disposed of by former proceedings, Layfayette B. Gleason was appointed receiver. Bond for \$2,500 approved and filed.

Subsequent inquiry by the receiver developed the fact that the supposed assets were not in fact a reality. It was supposed at first that certain lands in Missouri, containing valuable deposits of lead and zinc, were still the property of the company, but on investigation it was ascertained that they had been conveyed by a prior receiver and that the deed had never been recorded. Although the receiver has not been discharged, the matter is practically closed, there never having been anything for the Receiver to administer.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE COOPER EXCHANGE BANK.

Action was brought October 17, 1905, to dissolve defendant corporation on the ground of insolvency in accordance with the recommendation of Superintendent of Banks, November 16, 1905. Judgment of dissolution made and entered, R. Ross Appleton appointed receiver. December 30, 1905, dividends of 50 per cent. declared and paid. May 26, 1906, dividends of 25 per cent. declared and paid. December 22, 1906, dividend 12½ per cent. declared and paid.

November 15, 1907, intermediate account filed by receiver.

A claim against a National bank, amounting to about \$13,000 on a guaranty, has been decided in favor of the receiver by the Court of Appeals, but an appeal has been taken to the United States Supreme Court. Negotiations are now pending between the receiver and the stockholders to have the stockholders advance enough money to pay the balance due the depositors and take over the remaining assets. The receiver is acting in this case without any compensation.

SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

HOME MUTUAL BUILDING AND LOAN ASSOCIATION.

Action to dissolve corporation on ground of insolvency. Judgment of dissolution, 1898. J. Sheldon Frost, receiver. An action

was brought by the attorneys for the receiver against one of the officers of the society to set aside certain alleged fraudulent transfers of the assets of the defendant. This action was tried before Mr. Justice Kenefick and from his decision an appeal has been taken, which is now pending. The accounting of the receiver is being held pending the result of this action.

**ACTIONS BROUGHT BY ATTORNEY-GENERAL
AGAINST CORPORATIONS FOR THEIR
DISSOLUTION IN 1907.**

SUPREME COURT — GREENE COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE MORESVILLE TURNPIKE COMPANY.

This is an application by the Attorney-General for leave to commence an action to vacate the charter and annul the corporate existence of the defendant by reason of violations of orders of the court heretofore made. Charles R. O'Connor, of Hobart, N. Y., was designated by the Attorney-General to conduct the necessary proceedings and prosecute said action. On September 14, 1907, application was made to the Albany Special Term for leave to commence said action, and said application was thereafter granted. The summons and complaint was issued on the 5th day of October, 1907, to which the defendant has demurred by its attorney, Charles E. Nichols, of Jefferson, N. Y.

Matter pending.

SUPREME COURT — NEW YORK COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

*vs.*THE INTERNATIONAL GRAPHOPHONE COM-
PANY.

Application was made to the Attorney-General to commence an action to dissolve the defendant and forfeiting its corporate rights, privileges and franchises upon the ground of insolvency. The application was granted and Messrs. Fitch & Campbell, 30 Broad Street, New York City, were designated to conduct said proceedings. The summons, complaint, affidavit and order to show cause are dated October 16, 1907. By an order dated October 22, 1907, James F. Lynch, Esq., was appointed temporary receiver and on November 14, 1907, said receivership was made permanent.

Matter pending.

SUPREME COURT — RICHMOND COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

KNICKERBOCKER TRUST COMPANY.

Action to dissolve corporation on information of Superintendent of Banks, on the grounds that it had suspended business, was insolvent and that it was unsafe and inexpedient for it to continue in business. This action was commenced October 25, 1907; order appointing temporary receiver granted, also injunction order.

Matter pending.

SUPREME COURT — ULSTER COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

WILLIAMSBURG TRUST COMPANY.

Action to dissolve corporation on information of Superintendent of Banks, on the grounds that it had suspended business, was insolvent and that it was unsafe and inexpedient for it to continue in business. This action was commenced on November 16, 1907; order appointing temporary receiver granted, also injunction order.

Matter pending.

SUPREME COURT — ULSTER COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

THE HAMILTON BANK OF NEW YORK CITY.

Action to dissolve corporation on information of Superintendent of Banks, on the grounds that it had suspended business, was insolvent and that it was unsafe and inexpedient for it to continue in business. This action was commenced on November 16, 1907; order appointing temporary receiver granted, also injunction order. On December 27, 1907, the temporary receiver was discharged and order granted permitting the bank to resume business.

SUPREME COURT — ULSTER COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

INTERNATIONAL TRUST COMPANY.

Action to dissolve corporation on information of Superintendent of Banks, on the grounds that it had suspended business, was insolvent and that it was unsafe and inexpedient for it to continue in business. This action was commenced November 16, 1907; order appointing temporary receiver granted, also injunction order.

Matter pending.

SUPREME COURT — ULSTER COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

BROOKLYN BANK IN THE CITY OF NEW
YORK.

Action to dissolve corporation on information of Superintendent of Banks on the grounds that it had suspended business, was insolvent, and that it was unsafe and inexpedient for it to continue in business. This action was commenced November 16, 1907; order appointing temporary receiver granted, also injunction order.

Matter pending.

SUPREME COURT — ULSTER COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

BOROUGH BANK OF BROOKLYN.

Action to dissolve corporation on information of Superintendent of Banks on the grounds that it had suspended business, was insolvent, and that it was unsafe and inexpedient for it to continue in business. This action was commenced November 16, 1907; order appointing temporary receiver granted, also injunction order.

Matter pending.

SUPREME COURT — ULSTER COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

JENKINS TRUST COMPANY.

Action to dissolve corporation on information of Superintendent of Banks on the grounds that it had suspended business, was insolvent, and that it was unsafe and inexpedient for it to continue in business. This action was commenced November 16, 1907; order appointing temporary receiver granted, also injunction order.

Matter pending.

**VOLUNTARY DISSOLUTION PROCEEDINGS INSTI-
TUTED DURING THE YEAR 1907.**

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- Jan. 2. Supreme Court — Cattaraugus County. Olean Pack-
 age Co.
24. Supreme Court — Queens County. J. H. Coit & Son
 Co.
25. Supreme Court — Albany County. Albany & Beth-
 lehem Turnpike Road.
26. Supreme Court — Ontario County. Torrey Park
 Preserving Co.
28. Supreme Court — New York County. Herald Em-
 ployees' Co-operative Building & Loan Assn.
- Feb. 2. Supreme Court — Ontario County. Mead Drill
 Mfg. Co.
4. Supreme Court — New York County. E. C. Strong
 Co.
16. Supreme Court — New York County. Melmore
 Realty Co.
22. Supreme Court — Tompkins County. Ithaca Wall
 Paper Mills.
24. Supreme Court — New York County. Electrozone
 Co.
26. Supreme Court — Kings County. Imperial Amuse-
 ment Co.
28. Supreme Court — Essex County. Ticonderoga Union
 Terminal R. R. Co.
- March 8. Supreme Court — Columbia County. New York
 Gasoline Engine Co.
14. Supreme Court — Erie County. Buffalo Stock Ex-
 change.
20. Supreme Court — Kings County. Coal Exchange of
 the City of Brooklyn.
- April 2. Supreme Court — New York County. Church Con-
 struction Co.
3. Supreme Court — Kings County. Charleston Bill
 Posting & Distributing Co.
3. Supreme Court — Albany County. Coeymans &
 Westerlo Plank Road Co.

- April** 6. Supreme Court — New York County. Rathbone Oil Tract Co.
16. Supreme Court — New York County. Heights Club of the City of New York.
19. Supreme Court — New York County. Crescent Biscuit Mfg. Co.
21. Supreme Court — Monroe County. Rochester & Charlotte Turnpike Road Co.
27. Supreme Court — Kings County. Journeay & Burnham.
27. Supreme Court — Erie County. Seege Fur Tanning Co.
- May** 14. Supreme Court — New York County. Bank of Discount.
20. Supreme Court — Chautauqua County. Evangelical Lutheran Church of St. Peter's.
22. Supreme Court — Niagara County. Niagara Radiator Co.
22. Supreme Court — Erie County. Taylor Signal Co.
30. Supreme Court — New York County. Ned Wayburn's Vaudeville Attraction Co.
- June** 9. Supreme Court — New York County. Real Estate Owners' Fire Insurance Co.
13. Supreme Court — Ontario County. Ogoyago Hose Co.
21. Supreme Court — New York County. Frog Mountain Ores Co.
25. Supreme Court — Erie County. Mutual Credit Co.
26. Supreme Court — New York County. Pierrepont Hotel Co.
28. Supreme Court — Monroe County. West Side Building Co.
- July** 5. Supreme Court — Orange County. Welwood Health Resort.
6. Supreme Court — New York County. New York Mutual Savings & Loan Assn.

- July 9. Supreme Court — Kings County. New York Chartered Bond & Mortgage Co.
12. Supreme Court — Tompkins County. Ithaca Publishing Co.
14. Supreme Court — St. Lawrence County. Rochester & Ogdensburg Navigation Co.
14. Supreme Court — New York County. Stirling Hotel Co.
15. Supreme Court — Erie County. Lincoln Hospital.
17. Supreme Court — Kings County. Burns Foundry & Machine Co.
17. Supreme Court — Onondaga County. Boulevard Land & Improvement Co.
17. Supreme Court — Genesee County. Gleason Cold Storage Co.
21. Supreme Court — Jefferson County. Citizens' Telephone Co.
31. Supreme Court — Schenectady County. C. E. Dibble Co. of Schenectady.
- Aug. 6. Supreme Court — Tompkins County. McGreevey Construction Co.
8. Supreme Court — New York County. Mercantile Guarantee Co.
14. Supreme Court — New York County. Union Ballast Co.
- Sept. 4. Supreme Court — Orange County. Newburgh Plumbing Supply Co.
7. Supreme Court — New York County. Sanitary Furniture Mfg. Co.
8. Supreme Court — Oswego County. Fulton Telephone Co.
14. Supreme Court — Warren County. Merchants' Protective Association of Glens Falls.
18. Supreme Court — Albany County. Amsdell Brewing & Malting Co.
- Oct. 6. Supreme Court — Kings County. W. S. Weed Ice Cream Co.
9. Supreme Court — Monroe County. Economy Gas Machine Co.

- Oct. 10. Supreme Court — Albany County. Ravena Lime Co.
12. Supreme Court — New York County. Winchester
Speedometer Co.
15. Supreme Court — New York County. Woods &
Chattelher.
24. Supreme Court — New York County. Diamond
Fruit Packing Co.
26. Supreme Court — Erie County. Wartenberger
Tannage Co.
27. Supreme Court — Monroe County. Every Friday
Publishing Co.
29. Supreme Court — Erie County. Shaw-Brown Mo-
tor Co.
- Nov. 2. Supreme Court — New York County. Potter's Pub-
lishing Co.
4. Supreme Court — New York County. Bronx Title
& Mortgage Guarantee Co.
8. Supreme Court — Kings County. Local Realty Co.
of Jamaica.
13. Supreme Court — Erie County. Towns Paint &
Glass Co.
21. Supreme Court — Westchester County. Mount Ver-
non Utilities Corporation.
22. Supreme Court — New York County. Aluminum
Press Co.
22. Supreme Court — Wyoming County. Genesee Val-
ley Bluestone Co.
25. Supreme Court — Erie County. United States Laun-
dry Co.
28. Supreme Court — Lewis County. Beaver River
Lumber Co.
- Dec. 9. Supreme Court — Onondaga County. National Web
Tile Sewer Co.
16. Supreme Court — Niagara County. Niagara Tacho-
meter & Instrument Co.
19. Supreme Court — Broome County. Commercial
Travelers' Home Association of America.
25. Supreme Court — Cayuga County. Kidney & Brid-
gen Co.

**SEQUESTRATION ACTIONS INSTITUTED DURING
THE YEAR 1907.**

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- Jan. 11. Supreme Court — New York county. George W. Fairchild v. Alexander Typewriter Co.
15. Supreme Court — Erie county. George W. Nichols *et al.* v. Candee Lock Co.
23. Supreme Court — New York county. Guarantee Trust Co. of New York v. William R. Cole Co.
29. Supreme Court — Erie county. William Dempster v. The Dopp Water Purification & Softening Co.
29. Supreme Court — New York county. Benjamin Hurd and one v. Vici Machinery Co.
- Feb. 9. Supreme Court — New York county. The India Rubber & Gutta Percha Insulating Co. v. Engineering Co. of America.
12. Supreme Court — New York county. Carmine Altieri v. National Damp Roofing Co.
13. Supreme Court — Erie county. Mary Griffin v. New York Safety Reserve Fund Life Ins. Co.
15. Supreme Court — New York county. Butchers' Advocate Co. v. Robbins Chemical Co.
21. Supreme Court — Ontario county. Mary Borgman v. Vance Boiler Works.
- March 1. Supreme Court — New York county. Samuel Bachman v. R. & H. Laundry Co. *et al.*
13. Supreme Court — New York county. John J. Springer v. Empire State Motor Car Co. *et al.*
16. Supreme Court — New York county. Edgar J. Lauer v. Excelsior Automobile Co.
17. Supreme Court — Kings county. Sali B. Moers v. J. S. Neuberger Co.
20. Supreme Court — New York county. E. A. Williams & Son v. American Dimmer Co.
23. Supreme Court — Albany county. Alexander S. Osterboudt v. Green Island Ice Co.

- March** 25. Supreme Court. Orrill H. Vernon and one v. Reichard & Scheuber Mfg. Co.
- April** 3. Supreme Court — New York county. James T. Finn v. Twombly Power Co.
6. Supreme Court — New York county. The Greenwich Printing Co. v. Rossvan, limited.
6. Supreme Court — New York county. Earl Thatcher v. Progress Magazine Publishing Co.
9. Supreme Court — New York county. Adolph de Bary, etc., *et al.* v. Muller Bros.
19. Supreme Court — New York county. Theodore M. Hill v. Pelham Engineering & Construction Co.
19. Supreme Court — New York county. Elmer B. Yale v. New York Investment & Improvement Co.
- May** 7. Supreme Court — Erie county. Francesco Gnozzok v. Societa Fraterna Italiana di Mutuo Soccorso e Politica of Buffalo.
16. Supreme Court — New York county. Selina Seckendorf v. Bernard Kay *et al.*
16. Supreme Court. Twelfth Ward Bank of the City of New York v. Eden Construction Co.
23. Supreme Court — Oneida county. John W. Smith v. National Home Mutual Co.
23. Supreme Court — New York county. Waterman L. Hewett v. Century History Co.
25. Supreme Court — Kings county. Nathan Ross v. Eastern Crown Realty Co.
28. Supreme Court — New York county. Meyer Heller v. Gleason Realty Co. *et al.*
28. Supreme Court — New York county. Manhattan Glass Tile Co. v. Schaeffer-Carroll Construction Co.
28. Supreme Court — New York county. North Side Iron Works v. Thacke & Co.
- June** 6. Supreme Court — Erie county. Pascal P. Beals v. Crescent Electrical Mfg. Co.
8. Supreme Court — Kings county. Crucible Steel Co. of America v. Independent Mfg. Co.

- June 12. Supreme Court — Erie county. Henry Weil v. Fred Mersman Co.
15. Supreme Court — Westchester county. William H. Gardner v. Pan-American Mining & Smelting Co. and one.
18. Supreme Court — New York county. Klee-Thompson Co. v. James D. Murphy Co.
19. Supreme Court — Monroe county. Elliott B. Diamond v. Genesee Valley Securities Co. *et al.*
- July 9. Supreme Court — New York county. Charles Schaefer v. Coin Novelty Co.
12. Supreme Court — New York county. Reinhart Lisowsky v. William Stens Co.
13. Supreme Court — New York county. Edwin H. Hess v. Builders' Construction Co.
17. Supreme Court — New York county. Tom L. Coleman v. Little Giant Mfg. Co.
17. Supreme Court — New York county. William W. Crehore v. Fulton Furnace Co.
23. Supreme Court — Richmond county. Oscar J. Kapp and one v. Whitehall Cafe Co.
24. Supreme Court — New York county. William W. Niles and one v. Iroquois Hotel & Apartment Co.
- Aug. 3. Supreme Court — New York county. Frederick W. Cohn v. Hauben Realty Co.
5. Supreme Court — New York county. Hudson River Water Power Co. v. National Contracting Co.
5. Supreme Court — New York county. Hudson River Water Power Co. v. National Contracting Co. and Niagara Falls Power Co.
10. Supreme Court — New York county. Benjamin M. Whitlock, etc., v. National Steel & Wire Co.
10. Supreme Court — New York county. J. L. Myers & Co. v. Mrs. Miltenberger Co.
17. Supreme Court — Erie county. G. Nelson Howard v. Lake Yzabel Products Co.
20. Supreme Court — New York county. Jacob Leonhardt v. Cathedral Parkway & Realty Co.

- Aug. 24. Supreme Court — Kings county. Raphael Di Leva and one v. Saint Paulin of Nola Italian Assn.
30. Supreme Court — New York county. Robert P. Lee v. Cornelia L. Conklin *et al.*
30. Supreme Court — New York county. Levy Wetherhorn *et al.* v. Central Fire Proof Door & Sash Co.
- Sept. 6. Supreme Court — New York county. William H. Page v. Candelaria Gold & Silver Mining Co.
6. Supreme Court — New York county. Associated Merchants of New York v. Merralls Machinery Co.
6. Supreme Court — Erie county. Sherman S. Jewett *et al.* v. Buffalo Seal and Press Co.
11. Supreme Court — Erie county. Cortland Crossman v. Forbush Shoe Mfg. Co. *et al.*
19. Supreme Court — Erie county. Enrique C. de Villaverde v. Kendall Banning *et al.*
26. Supreme Court — Kings county. Nathan Cottler v. Manhattan Sash & Door Co.
28. Supreme Court — New York county. John H. Mahnken Co. v. J. P. Casey Co.
- Oct. 1. Supreme Court — New York county. Truss Metal Lath Co. v. Brandon Realty Co.
3. Supreme Court — New York county. Metropolitan Printing Co. v. American Watchman's Time Detector Co.
3. Supreme Court — New York county. Frank Netschert Co. v. Opera Comique Co. and one.
6. Supreme Court — New York county. Otto C. Sommerich v. Lancaster & Engelman Engineering Co.
5. Supreme Court — Monroe county. Albert Mutschler v. Autmo Cabinet Co.
7. Supreme Court — Saratoga county. First Nat'l Bank of Saratoga Springs v. Joseph M. Cohn House Wrecking Co.
9. Supreme Court — New York county. Century Building Co. v. Federal Bond & Surety Co.
10. Supreme Court — Niagara county. Charles E. Tracy v. Lakeside Telephone Co.

- Oct. 16. Supreme Court — Saratoga county. Ballston Spa National Bank v. The News Co.
18. Supreme Court — New York county. Burlington Transfer & Storage Co. v. Robbins Chemical Co.
19. Supreme Court — New York county. Merchants Exchange National Bank of New York v. American Watchman's Time Detector Co.
24. Supreme Court — New York county. Editor & Publisher Co. v. Progress Magazine Publishing Co.
25. Supreme Court — Westchester county. Elizabeth B. Kendall *et al.* v. Uplands Farm Alliance *et al.*
28. Supreme Court — New York county. Morris E. Goldfine v. Universal Building & Construction Co.
31. Supreme Court — New York county. Louis Stackell v. Minsky Realty & Construction Co.
- Nov. 14. Supreme Court — Kings county. Scranton & Lehigh Coal Co. v. Morgan Contracting Co.
22. Supreme Court — New York county. Nathan Radus v. Colaizzi's Table d'Hote Co.
23. Supreme Court — Kings county. Oscar Von Bernuth v. Henry Claus Brewing Co.
28. Supreme Court — Onondaga county. Clarence R. Tryon and one v. Northwestern Mutual Fire Insurance Co. of Onondaga County.
28. Supreme Court — New York county. Sam Brosnovan and one v. Automatic Beverage Co.
- Dec. 4. Supreme Court — Kings county. East New York Coal Co. v. James Lyon, a corporation.
6. Supreme Court — New York county. Leopold Herman v. Greater New York Mineral Water Protective Assn.
12. Supreme Court — New York county. Benjamin F. Elgar *et al.*, etc., v. The Independent Concreting, Cementing, Fireproofing Co.
14. Supreme Court — New York county. Broadway Bldg. Co. v. Northwestern Realty Co.
17. Supreme Court — New York county. Charity Stewart v. The Stewart Machine Co.

- Dec. 17. Supreme Court — Kings county. Wm. I. Tulin, etc.
v. Virginia Peanut Product Co. *et al.*
19. Supreme Court — Kings county. Otto C. Meyer &
Co. v. Henry Kroeger Construction Co.
23. Supreme Court — Erie county. John Heubner v.
Wartenberger Tannage Co.
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**FORECLOSURE ACTIONS INSTITUTED DURING THE
YEAR 1907.**

- Jan. 1. Supreme Court — New York county. Samuel Weil
v. Philip Schragowitz *et al.* No. 1.
1. Supreme Court — New York county. Samuel Weil
v. Philip Schragowitz *et al.* No. 2.
7. Supreme Court — Putnam county. John C. Gulick
v. Amelia A. Jones *et al.*
9. Supreme Court — Queens county. Isabelle T. Wi-
nans v. Celia B. Schopen *et al.* No. 1.
9. Supreme Court — Queens county. Isabelle T. Wi-
nans v. Celia B. Schopen *et al.* No. 2.
12. Supreme Court — Kings county. John G. Hage-
meyer v. John Waters *et al.*
24. Supreme Court — Kings county. Louise Backhaus v.
Leopold Hutter *et al.*
28. Supreme Court — New York county. George R.
Smith v. Henry Keilus *et al.*
28. Supreme Court — New York county. Frederick
Cordes v. Frida Hubner *et al.*
31. Supreme Court — Kings county. George H. Fisher
and one v. Thomas Enright *et al.*
31. Supreme Court — Queens county. Thomas F. Tuohy
v. William H. Carroll *et al.*
Feb. 9. Supreme Court — New York county. Marcus Rosen-
thal v. Lazarus Hannes *et al.*

- Feb. 14. Supreme Court — Yates county. William H. Fox v. Lillian B. Hunter *et al.*
17. Supreme Court — New York county. Sophie M. La Grave v. Alfred R. Goslin *et al.*
20. Supreme Court — New York county. Joseph Stroock v. Jack Vigorito *et al.*
24. Supreme Court — New York county. East River Savings Institution v. Alfred S. Malcomson *et al.* No. 1.
24. Supreme Court — New York county. East River Savings Institution v. Alfred S. Malcomson *et al.* No. 2.
- March 3. Supreme Court — New York county. Isaac Liberman v. Max Kessler *et al.*
10. Supreme Court — Onondaga county. Syracuse Savings Bank v. Marianna Rapetti *et al.*
15. Supreme Court — Orange county. Charles M. Ward v. Thomas Wrigley *et al.*
15. Supreme Court — New York county. Greenwich Savings Bank v. Edward S. Fowler, etc., *et al.*
16. Supreme Court — New York county. Solomon Weill v. Henry Lewis *et al.*
22. Supreme Court — Ulster county. Maggie F. Palmatier v. Nora Nelson *et al.*
26. Supreme Court — Suffolk county. Charles E. Robertson v. Belle Yamaki *et al.*
31. Supreme Court — New York county. Margaret Knox v. Mary Altieri *et al.*
- April 3. Supreme Court — New York county. Lizzie Eder v. Eliza Ann Humphrey *et al.*
4. Supreme Court — Kings county. Home Life Insurance Co. of New York v. Margaret A. Pomeroy *et al.*
11. Supreme Court — New York county. Nathan Lubow and one v. Max Kessler *et al.*
18. Supreme Court — New York county. Abraham J. Dnorsky v. Charles C. Glatt *et al.*
18. Supreme Court — New York county. Henry Borges v. Joseph Rosenberg *et al.*

- April** 25. Supreme Court — New York county. Samuel F. Robinson v. Electric Rubber Mfg. Co. No. 1.
25. Supreme Court — New York county. Samuel F. Robinson v. Electric Rubber Mfg. Co. No. 2.
27. Supreme Court — New York county. Henry F. Schwarz v. Isabella Mayer *et al.*
- May** 14. Supreme Court — New York county. Blanche M. Crighton v. Alice Mackesey *et al.*
21. Supreme Court — New York county. Henry Metzinger v. John Doe *et al.*
- June** 13. Supreme Court — Queens county. Frank J. Krach v. Lizzie Hoffman *et al.*
17. Supreme Court — Kings county. Euellia Cornell v. John D. Holsten *et al.*
20. Supreme Court — New York county. N. Y. Life Insurance Co. v. John A. Hazlett *et al.*
29. Supreme Court — New York county. Industrial Realty Co. v. Joseph Vitous *et al.*
- July** 12. Supreme Court — New York county. Florence G. Bryan v. Joseph Nordenschild *et al.*
26. Supreme Court — New York county. Sundel Hyman v. Morris H. Feder *et al.*
- Aug.** 6. Supreme Court — New York county. Mutual Life Insurance Co. of New York v. Kate L. Trenholm *et al.*
10. Supreme Court — Kings county. Thomas J. Skuse v. Israel Goldberg *et al.*
27. Supreme Court — New York county. Catharine Sutorius v. John J. Mueller *et al.*
- Sept.** 4. Supreme Court — Queens county. Sender Jarmulowsky v. New York Exchange & Investment Co. *et al.*
11. Supreme Court — Yates county. William H. Fox v. Lillian B. Hunter *et al.*
14. Supreme Court — New York county. Aaron Goodman v. Louis Zimmerman *et al.* No. 1.
14. Supreme Court — New York county. Aaron Goodman v. Louis Zimmerman *et al.* No. 2

- Sept. 15. Supreme Court — New York county. Abraham A. Levin v. Emanuel S. Gates *et al.*
15. Supreme Court — New York county. Annie Kovner v. Emanuel S. Gates *et al.* No. 1.
15. Supreme Court — New York county. Annie Kovner v. Emanuel S. Gates *et al.* No. 2.
19. Supreme Court — Richmond county. Eva Hamsch v. Adele Gorner *et al.*
21. Supreme Court — New York county. William F. Acton and one v. Arthur H. Sanders *et al.*
24. Supreme Court — New York county. Adrian H. Jackson v. Epstein Cohen Co. *et al.*
26. Supreme Court — New York county. George Sinram v. Samuel Wacht *et al.*
- Oct. 1. Supreme Court — New York county. James Sullivan v. Nanette L. Schneider *et al.*
6. Supreme Court — Kings county. Lawyers' Title Insurance & Trust Co. v. Dennison Construction Co. *et al.*
26. Supreme Court — New York county. Margaret Rosenzweig v. Annie Silver *et al.*
- Nov. 2. Supreme Court — New York county. Mutual Life Insurance Co. of New York v. William A. Tuttle *et al.*
4. Supreme Court — Monroe county. Hattie S. Browning v. Kate Killip *et al.*
8. Supreme Court — New York county. William S. Patten v. Margaret Mulhall *et al.*
16. Supreme Court — Kings county. Georgiana Ogden Eichler v. George A. Scully *et al.*
27. Supreme Court — New York county. B. Aymar Sands *et al.*, etc. v. Samuel Greenberg *et al.*
- Dec. 5. Supreme Court — Wyoming county. Greenleaf S. Van Gorder, etc. v. Genesee Valley Bluestone Co. *et al.*
7. Supreme Court — New York county. Mary E. Robert v. Theodore Allen *et al.*
12. Supreme Court — New York county. Emma Weber v. Nita Walker *et al.*

- Dec. 12. Supreme Court — New York county. Lizzie M. Fellows v. Isidor Bloom *et al.*
12. Supreme Court — Wayne county. Elmer Adle, etc., *et al.* v. Theodore Van Tassell *et al.*
13. Supreme Court — New York county. Sundel Hyman v. Isaac Stroh *et al.*
14. Supreme Court — New York county. Atlantic Realty Co. v. Louis A. Solomon *et al.*
18. Supreme Court — New York county. Mutual Life Insurance Co. v. Fleischmann Realty & Construction Co. (No. 1.)
18. Supreme Court — New York county. Mutual Life Insurance Co. v. Fleischmann Realty & Construction Co. (No. 2.)
18. Supreme Court — New York county. Mutual Life Insurance Co. v. Fleischmann Realty & Construction Co. *et al.* (No. 3.)
18. Supreme Court — New York county. John C. Gullick v. William H. Milton *et al.*
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**PARTITION ACTIONS INSTITUTED DURING THE
YEAR 1907.**

- Jan. 3. Supreme Court — New York county. George F. Johnson v. George H. Dygett *et al.*
11. Supreme Court — New York county. John Murphy v. Mary Murphy *et al.*
- Feb. 2. Supreme Court — Madison county. Albertus Wilsey v. Peter Wilsey *et al.*
12. Supreme Court — New York county. William G. Park v. Algernon S. Bell *et al.*
- March 28. Supreme Court — Fulton county. Alvan V. Quackenbush v. Jennie B. Woodworth *et al.*
- April 6. Supreme Court — New York county. Augusta L. MacFarlane v. John V. Brower *et al.*

- April 20. Supreme Court — Orange county. Henry J. Pecheux
v. William J. Wallace *et al.*
- May 19. Supreme Court — New York county. Charles D.
Levin v. Marcus Rosenthal *et al.*
- July 17. Supreme Court — New York county. John Reynolds
v. Patrick Reynolds *et al.*
- Aug. 22. Supreme Court — Kings county. John H. F. Meiners
v. John F. Meiners *et al.*
27. Supreme Court — New York county. John Hayes v.
Florence Harrison *et al.*
29. Supreme Court — Suffolk county. Martha F. Coster
and one v. Georgeanna Byard *et al.*
31. Supreme Court — Saratoga county. Viola H. Ferry
v. Flora M. Dunham *et al.*
- Sept. 24. Supreme Court — New York county. John Collins
v. Mary Collins *et al.*
- Oct. 1. Supreme Court — Kings county. William Cosgrove
et al. v. Sarah Lamb *et al.*
11. Supreme Court — Queens county. John O'Neill v.
Mary Staker *et al.*
29. Supreme Court — Westchester county. James Mc-
Dermott v. Susan McGeehan *et al.*
- Nov. 21. Supreme Court — Kings county. Thomas Farrell v.
James Farrell *et al.*
26. Supreme Court — New York county. Annie A. Slinn
v. Charles E. Ackerman *et al.*
- Dec. 3. Supreme Court — Monroe county. Adam Ihrig v.
Katherine Trautman *et al.*
3. Supreme Court — Monroe county. Mary Glatt v.
John H. Glatt *et al.*
21. Supreme Court — Kings county. Thomas R. Eagleson
v. Margaret A. Eagleson *et al.*

APPLICATIONS FOR AUTHORITY TO AMEND CERTIFICATES OF INCORPORATION OR TO CHANGE NAME.

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| Jan. | 7. | Supreme Court — Erie county. Towns Paint & Glass Co. (Change name.) |
| Feb. | 15. | Supreme Court — New York county. Schour-Weber Candy Co. (Change name.) |
| | 26. | Supreme Court — New York county. Fathers of the Blessed Sacrament. (Amend certificate.) |
| April | 27. | Supreme Court — Erie county. Niederpruem, Gibbs & Schaaf Co. (Change name.) |
| May | 14. | Supreme Court — New York county. Spokane Co. (Amend certificate.) |
| | 19. | Supreme Court — Erie county. Cortland County Lighting Co. (Amend certificate.) |
| | 22. | Supreme Court — Allegany county. Scoville, Brown & Co. (Amend certificate.) |
| July | 28. | Supreme Court — New York county. McClure, Phillips & Co. (Change name.) |
| Aug. | 22. | Supreme Court — Oneida county. Oriskany Hydro Electric Co. (Amend certificate.) |
| Sept. | 25. | Supreme Court — Dutchess county. Dutchess Light, Heat & Power Co. (Amend certificate.) |
| | 28. | Supreme Court — New York county. B. Waldstein Co. (Change name.) |
| Oct. | 9. | Supreme Court — New York county. Gage Publishing Co. (Change name.) |
| | 31. | Supreme Court — New York county. J. R. Alsing Co. (Change name.) |
| Dec. | 1. | Supreme Court — New York county. Montreal Amusement Co. (Change name.) |
| | 4. | Supreme Court — New York county. Majestic Neckwear Co. (Amend certificate.) |
| | 8. | Supreme Court — New York county. City Federation Hotel. (Amend certificate.) |
| | 12. | Supreme Court — New York county. The General Railway Supply Co. (Amend certificate.) |
| | 15. | Supreme Court — Monroe county. Stark-Nellis Realty Co. of Rochester. (Amend certificate.) |

**MISCELLANEOUS ACTIONS AND PROCEEDINGS IN-
STITUTED DURING THE YEAR 1907.**

- Jan. 3. Supreme Court — Monroe county. **Richard V. Callan v. Adolph J. Rodenbeck.** (Action to recover for services rendered Statutory Revision Commission.)
4. Supreme Court, Appellate Division, First Department. In the Matter of the Application of Paul E. Stevenson for a payment out of the general fund of the Supreme Court.
4. Supreme Court, Appellate Division, First Department. In the Matter of the Application of Maxwell Stevenson for a payment out of the general fund of the Supreme Court.
4. Supreme Court, Appellate Division, First Department. In the Matter of the Application of Eloise Kernochan for a payment out of the general fund of the Supreme Court.
4. Supreme Court — Albany county. In the Matter of the Application of George B. McClellan for an order directing the issuance of a writ of prohibition against William S. Jackson, Attorney-General of the State of New York, and William Randolph Hearst.
5. Supreme Court — Albany county. **People *ex rel.* George P. Sawyer *et al.* v. State Board of Railroad Commissioners.** (To review determination of said board.)
7. Supreme Court — New York county. **People v. George B. McClellan.** (Test title of office of mayor of the city of New York.)
10. Supreme Court — New York county. **People *ex rel.* Henry Elias Brewing Co. v. Frank Gass as register of the county of New York.** (To construe Mortgage Tax Law.)

- Jan. 10. Supreme Court — New York county. *People ex rel. Cooper Union for the Advancement of Science and Art v. Frank Gass as register of the county of New York.* (To construe Mortgage Tax Law.)
16. Supreme Court — Albany county. *The People ex rel. Charles T. Barney v. John S. Whalen, as Secretary of State.* (Mandamus to compel filing of papers.)
16. Supreme Court — Allegany county. *Silas Mason Potter, as administrator, etc., of M. Adella Potter, deceased v. Trustees of Holland Patent Union School et al.* (Construction of a will.)
17. Supreme Court — Albany county. *The People ex rel. George B. McClellan v. William S. Jackson, Attorney-General of the State of New York, and William Randolph Hearst.* (Contempt proceedings.)
17. Supreme Court — New York county. *Alvin Boenhardt v. Jacob W. Loch et al.* (Action for accounting in connection with the disaster to the General Slocum steamer.)
24. Supreme Court — Monroe county. *Richard Schutze v. The Insko Packing Co. et al.* (Injunction.)
24. Supreme Court — Kings county. *People ex rel. Hector McNeile v. Martin H. Glynn, as Comptroller.* (Mandamus to compel reinstatement in position of transfer tax appraiser.)
25. County Court — Franklin county. In the Matter of the Application of Harlow Wheeler, sued under the name of Charles Wheeler, for his discharge from imprisonment upon an execution issued out of the Supreme Court of the State of New York against his person.
29. Supreme Court — Albany county. *People ex rel. Brooklyn Union Gas Company v. Martin H. Glynn as Comptroller of the State of New York.* Proceedings of 1905. (Certiorari to review taxes assessed by Comptroller.)

- Jan. 29. Supreme Court, Appellate Division, First Department. In the Matter of the Application of the City of New York for the transfer and payment by the chamberlain of the city of New York of certain moneys.
30. Supreme Court — New York county. *The People v. New York Electrical Workers' Union et al.* (Judicial supervision of defendant.)
- Feb. 7. Supreme Court — New York county. *John C. Orr Co. v. Samuel Miller et al.* (Foreclosure of mechanic's lien.)
8. Supreme Court — Queens county. In the Matter of the Application of the Pennsylvania, New York & Long Island Railroad to acquire by eminent domain several parcels of land, with the buildings, etc., thereon and appurtenances thereto, situated in the city of New York, borough of Queens.
13. Supreme Court — Chemung county. *The People ex rel. John H. Deister v. Thomas J. Wintermute.* (Test title to office of treasurer of Chemung county.)
18. County Court — Franklin county. In the Matter of the Application of Fred McNeil for his discharge from imprisonment upon an execution issued out of the Supreme Court of the State of New York against his person.
21. Supreme Court — Niagara county. In the Matter of the Application of Frank B. Seeley for a writ of mandamus against Nicholas V. V. Franchot as Superintendent of Public Works. (To compel reinstatement in position.)
22. Supreme Court — Putnam county. In the Matter of the Application of five citizens of the county of Putnam to compel the Republican county committee and the officers, etc., to file a sufficient statement and account of expenses in accordance with the provisions of chapter 502 of the Laws of 1906.

- Feb. 26. Supreme Court — Albany county. In the Matter of the Petition of William S. Jackson, Attorney-General, for an order for the examination of certain persons under the provisions of chapter 690 of the Laws of 1899. (Matter of the American Telephone & Telegraph Co.-U. S. Independent Telephone Co.)
- March 1. Supreme Court — Albany county. The People *ex rel.* Harvey Stewart McKnight for a writ of mandamus against Martin H. Glynn, as Comptroller of the State of New York. (Mandamus to compel reinstatement as transfer tax appraiser.)
2. Supreme Court — New York county. In the Matter of the Petition of Ludwig Stettheimer as executor of last will, etc., of Albert Stettheimer. (Payment of a legacy.)
13. Supreme Court of the United States. In the Matter of the Application of John Johnson for writ of habeas corpus and certiorari.
15. Supreme Court — Westchester county. In the Matter of the Application of A. Henry Mosle for an order directing that testimony relating to the title of certain real estate of the town of Poundage, Westchester county, known as the "Lewis Green farm," be perpetuated under chapter 14, title 1, article 10 of the Code of Civil Procedure.
17. Supreme Court — New York county. Eugenio de Costa v. New York Electrical Workers' Union. (Judicial supervision of corporation.)
19. Supreme Court — Albany county. People v. New York, Ontario & Western Railroad Co. (To recover moneys paid out of State treasury.)
- April 3. Supreme Court — Albany county. In the Matter of the Application of William C. Duell for a peremptory writ of mandamus against Martin H. Glynn as Comptroller. (Reinstatement of applicant as transfer tax assistant, Westchester county.)

- April. 4. Supreme Court — Albany county. People *ex rel.* Buffalo Frontier Terminal Railroad Co. v. Board of Railroad Commissioners. (To review determination of board.)
6. Supreme Court — Queens county. Mary Smith v. People of the State of New York *et al.* (Admeasurement of dower.)
10. Supreme Court — Albany county. The People v. American Telephone & Telegraph Company *et al.* (Violation of Anti-trust Law, chapter 690, Laws 1899.)
12. Supreme Court — Albany county. People *ex rel.* New York, Ontario & Western Railroad v. Board of Railroad Commissioners and Hancock & East Branch Railroad Co. (To review determination of board.)
12. Supreme Court — Albany county. People *ex rel.* Delaware & Hudson Co. and Ulster & Delaware Railroad Co. v. Board of Railroad Commissioners and Schenectady & Margaretville Railroad Co. (To review determination of board.)
17. Supreme Court — Albany county. People *ex rel.* New York Central & Hudson River Railroad Co. v. Board of Railroad Commissioners. (To review determination of board.)
18. Supreme Court — New York county. Frank Schmitt v. John Foersch and Jacob Platt as executors, etc., *et al.* (Action to enforce sale of real estate.)
19. Supreme Court — Albany county. People *ex rel.* James L. Banker v. Frederick Skene as State Engineer and Surveyor. (Mandamus to compel reinstatement in position.)
22. Supreme Court — New York county. In the Matter of the Application of the East River Gas Co. of Long Island City for an order appointing a referee to take a deposition and perpetuate testimony as prescribed in article 10 of title 1 of chapter 14 of the Code of Civil Procedure.

- May
1. Supreme Court — Albany county. *People ex rel. Erie Railroad Co. v. Board of Railroad Commissioners.* (To review determination of board.)
 1. Supreme Court — Rockland county. *People ex rel. Village of Grand View-on-Hudson v. Board of Railroad Commissioners and West Shore Traction Co.* (To review determination of board.)
 1. Supreme Court — Rockland county. *People ex rel. Rockland Railroad Co. v. Board of Railroad Commissioners and West Shore Traction Co.* (To review determination of board.)
 3. Supreme Court — Albany county. *People ex rel. Edward J. Mahady v. Charles F. Milliken et al.,* constituting State Civil Service Commission. (To review action of commission.)
 10. Supreme Court — Westchester county. *People ex rel. Harry Schenck v. Franklin H. Briggs as Superintendent of the State Industrial School.* (Habeas corpus.)
 10. Supreme Court — Franklin county. *People v. Santa Clara Lumber Co.* (Motion to set aside judgment, etc.)
 11. Supreme Court — New York county. *People ex rel. Union Sulphur Co. v. Martin H. Glynn as Comptroller.* (To review action of Comptroller in assessment of taxes.)
 21. Supreme Court — Schenectady county. *Fort Wayne Electric Works v. People et al.* (To determine rights under a lien.)
 23. Supreme Court — Broome county. *People ex rel. Watson E. Roberts v. Albert Hotchkiss.* (To determine title to office of recorder of Binghamton.)
 24. Supreme Court — New York county. *In the Matter of the Application of the Attorney-General for leave to commence an action against the Consolidated Gas Co. of New York.*
 26. Supreme Court — New York county. *In the Matter of the filing of the certificate of the reduction of*

the capital stock of the O'Connor, Newman Co.,
nunc pro tunc.

- June 7. Supreme Court — Otsego county. People *ex rel.* Elizabeth S. Potter *et al.* v. Board of Railroad Commissioners and Cooperstown & Northern Railway Co. (To review determination of board.)
10. Supreme Court — New York county. In the Matter of the Application of the People of the State of New York for a writ of mandamus directing the Interborough Rapid Transit Co. to erect a stairway at the corner of Houston street and the Bowery.
12. Supreme Court — Albany county. People *ex rel.* Charles M. Leet v. Franklin B. Ware as State Architect. (Certiorari to review discharge of re-lator from position.)
24. Supreme Court — Oneida county. People v. Roy H. Martin *et al.* (To restrain defendants from acting as a co-operative fire insurance company.)
24. Supreme Court — In the Matter of the Application of the People of the State of New York for a writ of mandamus directing the Pennsylvania Railroad Co. to erect a station at Oramel, N. Y.
25. Supreme Court — New York county. In the Matter of the Application of the People of the State of New York for a writ of mandamus directing the Interborough Rapid Transit Co. to erect an additional stairway to the uptown station of the elevated road at Cortland and Greenwich streets on its Ninth avenue line.
27. Supreme Court — New York county. In the Matter of the Application of the People of the State of New York for a writ of mandamus directing the Interborough Rapid Transit Co. to erect stairways at Eighteenth street and Third avenue.
27. Supreme Court — New York county. In the Matter of the Application of the People of the State of New York for a writ of mandamus directing the Interborough Rapid Transit Co. to erect stairways at Ninth street and Third avenue.

- June 27. Supreme Court, Appellate Division, Third Department. In the Matter of the Complaint of the Trustees of the Village of Saratoga Springs v. Saratoga Gas, Electric Light & Power Co. (To review determination of Commission of Gas & Electricity.)
27. Supreme Court. In the Matter of the Application of the People of the State of New York for a writ of mandamus directing the Pennsylvania Railroad Co. to place an additional trainman on each of the trains Nos. 51, 52, 57 and 68.
27. Supreme Court—Kings county. People *ex rel.* South Shore Traction Co. v. Board of Railroad Commissioners. (To review determination of board.)
29. Supreme Court.—New York county. In the Matter of the Application of the People of the State of New York for a writ of mandamus directing the Interborough Rapid Transit Co. to erect an additional stairway to the platform station at the corner of Ninety-ninth street and Third avenue.
30. United States District Court. *In re* William Trist Bailey, bankrupt.
30. Court of Special Sessions—New York city. People v. George H. Taylor. (Action for penalties under Labor Law.)
- July 8. Supreme Court—New York county. In the matter of the Petition of William S. Jackson, Attorney-General of the State of New York, for an order directing Clarence H. Mackey and others to appear before a referee for examination pursuant to chapter 690 of the Laws of 1899. (Violation of Anti-Trust Law by Western Union Telegraph Co. and Postal Telegraph-Cable Co.)
11. Supreme Court—New York county. People v. Consolidated Gas Co. of New York. (Action to determine franchises.)
11. Supreme Court—New York county. In the Matter of the Application of the Attorney-General for

leave to commence an action against the Interborough-Metropolitan Co. (To annul existence of said corporation.)

- July. 12. Supreme Court — Suffolk county. In the Matter of the Application of Carrie A. Carll to perpetuate testimony under the Code of Civil Procedure.
23. City Court of the city of New York. In the Matter of the Application for a receiver in supplementary proceedings of Sherman, Brown, Clements Co., a judgment creditor, v. Whitehall Contracting Co., judgment debtor.
23. Supreme Court — New York county. Michael E. O'Connor v. James M. Glen, William A. Dunneback and Manhattan Desk Co. (Judicial supervision of corporation.)
26. Supreme Court, Appellate Division, Third Department. In the Matter of the Application of the Village of Potsdam for a certificate of authority to establish, maintain and operate an electric lighting system for other than municipal purposes.
27. Supreme Court — Albany county. Otto G. Foelker v. John S. Whalen as Secretary of State. (Injunction to prohibit sending out of election notices.)
29. Supreme Court — Albany county. People *ex rel.* Owen Cassidy v. John S. Whalen as Secretary of State. (Mandamus to prevent sending out election notices.)
- Aug. 1. Supreme Court — Albany county. People *ex rel.* Jardine, Matheson & Co., limited, v. John S. Whalen as Secretary of State. (Mandamus to compel filing of papers.)
2. Supreme Court — Albany county. People *ex rel.* Michael J. Flaherty v. Charles F. Milliken *et al.*, constituting State Civil Service Commission. (Mandamus.)
2. Supreme Court — Albany county. In the Matter of the Application of the Brandow Printing Co. for a writ of certiorari directed to the State Printing Board. (Re-awarding of bids for printing.)

- Aug. 2. Supreme Court — Albany county. In the Matter of the Application of John A. McCarthy for a writ of certiorari directed to the State Printing Board. (Re-awarding of bids for printing.)
2. Supreme Court — Albany county. People *ex rel.* Wynkoop-Hallenbeck-Crawford Co. v. State Printing Board. (Re-awarding of bids for printing.)
8. Supreme Court, Appellate Division, Third Department. In the Matter of the Application of the Watertown Gas Light Co. for consent to issue first mortgage bonds to the amount of \$500,000 of an authorized issue of \$750,000 and to issue capital stock to the amount of \$300,000.
8. Supreme Court, Appellate Division, Third Department. In the matter of the Complaint of Edward F. Brush as mayor of the city of Mount Vernon, made pursuant to section 15, chapter 737, Laws of 1905 against Westchester Lighting Co.
9. Supreme Court, Appellate Division, Third Department. People v. Duffy-McInnerey Co. (Submission of agreed controversy *in re* tax on original issues of stock.)
9. Supreme Court — Washington county. Champlain Stone & Sand Co. v. Atlantic Gulf & Pacific Co. (Injunction to prevent trespass in connection with building of barge canal.)
17. Supreme Court — Albany county. In the Matter of the Application of the Vandervoort Realty Co. for a writ of certiorari to Martin H. Glynn as Comptroller. (To review assessment of taxes.)
- Sept. 3. Supreme Court — Greene county. In the Matter of the Application of the Attorney-General for leave to commence an action to vacate the charter and annul the existence of the Moresville Turnpike Co.
4. Supreme Court — New York county. In the Matter of the Application of the Bankers' Trust Co. for a writ of certiorari to be directed to Martin H. Glynn as Comptroller. (To review assessment of taxes.)

- Sept. 7. Supreme Court. Stephen L. Maroti v. Michael Maroti *et al.* (To determine title to real estate.)
17. Supreme Court — New York county. In the Matter of the Application of Susan Wheeler Patterson and others to perpetuate testimony involving title to certain real estate.
24. Supreme Court — New York county. John J. O'Brien v. Catherine Tilley *et al.* (Action to remove cloud from title.)
24. Supreme Court — Albany county. In the Matter of the Application of Margaret Pellet as administratrix, etc., of James R. Craig, deceased, for the payment of final dividend upon stock held by her, standing in the name of said decedent, deposited with the county treasurer of Albany county.
24. Supreme Court — Albany county. People *ex rel.* Delancey N. Matthews *et al.* v. City of New York and State Water Supply Commission. (Mandamus in matter of acquiring water supply for the city of New York.)
- Oct. 1. Supreme Court — Broome county. People v. Guy W. Beardsley *et al.* (Criminal libel.)
1. Supreme Court — New York county. In the Matter of the Application of the Attorney-General for leave to commence an action against the Postal Telegraph-Cable Co. (Vacate charter and annul existence.)
1. Supreme Court — New York county. In the Matter of the Application of the Attorney-General for leave to commence an action against the Western Union Telegraph Co. (Vacate charter and annul existence.)
9. Supreme Court — Fulton county. Eugene W. Peck and one v. The People *et al.* (Foreclosure mechanic's lien.)
15. Supreme Court — Queens county. Parvin Harbaugh v. Artemas Ward, Sr., *et al.*, as trustees of Hollis Park Co., etc. (Accounting of trustees and appointment of receiver.)

- Oct. 30. Supreme Court — Ninth Judicial District. *People ex rel. Thaddeus L. Weatherly v. Martin H. Glynn as Comptroller.* (Mandamus to compel payment of salary as stenographer of Supreme Court.)
31. Supreme Court — Nassau county. *Long Island Railroad Co. v. Susan Kirby et al.* (Condemnation of real estate.)
- Nov. 2. Supreme Court — New York county. *In re* application of certain persons to have affairs of Hamilton Bank of New York examined by a referee.
7. Supreme Court — Albany county. *People ex rel. Joseph Evans v. Charles F. Milliken et al.*, constituting Civil Service Commission. (Mandamus to review action of Board.)
13. Supreme Court — Albany county. *The People by Martin H. Glynn, Comptroller, v. Mercantile Safe Deposit Co.* (Action to recover penalties.)
15. Supreme Court — Erie county. *Canal Quarry Co. v. People et al.* (Foreclosure of a lien.)
16. Supreme Court — Herkimer county. *West Canada Lumber Co. v. Charles A. Wentworth and Frederick C. Stevens.* (Action to recover property seized by the State.)
18. Supreme Court — Cayuga county. *Gilbert B. Lewis and one v. David D. Allerton et al.* (Foreclosure of a lien.)
23. Supreme Court — Westchester county. *In the Matter of the Application of Walter W. Law to perpetuate testimony.*
30. Supreme Court — Tompkins county. *In the Matter of the Application of the Tompkins County Co-operative Fire Insurance Co.* (Application to file certificate of incorporation.)
- Dec. 2. Supreme Court — Albany county. *In the Matter of the Application of Sarah R. Evers for a peremptory writ of mandamus against Martin H. Glynn, State Comptroller.* (To compel payment of a Court of Claims judgment.)

- Dec. 5. Supreme Court — Onondaga county. *People v. Daniel W. Gridley et al.* (Injunction to restrain Northwestern Mutual Fire Insurance Co. of Onondaga County from doing business.)
7. Supreme Court — Westchester county. *Isaac S. Remsen et al. v. Nehemiah Searles et al.* (Determine title to real estate.)
17. Supreme Court — Kings county. *People ex rel. Joseph Abel v. Charles F. Milliken et al.*, constituting State Civil Service Commission. (To review action of board.)
18. Supreme Court — Appellate Division, First Department. *People ex rel. John S. Ferguson v. Edward H. Reardon*, a peace officer of the county of New York. (Violation of Stock Transfer Tax Law.)
24. Supreme Court — New York county. *The People v. John F. Ahearn*. (Action to test title of defendant to office of president of the borough of Manhattan.)
24. Supreme Court — Kings county. *Paul Lichtenstein and others as Trustees, etc., v. Transatlantic Fire Insurance Co. of Hamburg, Germany, et al.* (Action for an accounting by defendants.)
25. U. S. District Court — Southern District of New York. *In the Matter of J. C. Lyons Building & Operating Co.*, an alleged bankrupt. (Action to make receivers of bankrupt parties defendant.)

CERTIFICATES OF INCORPORATION EXAMINED.

(Membership Corporations.)

Day Home and School for Crippled Children.
Onondaga County Orphan Asylum.
Nepperhan Sanatorium.
Franciscan Sisters of Mary.
Sprain Ridge Hospital.
Zion Hospital Association of the East Side.
Brooklyn Ladies' Hebrew Home for the Aged.
St. Ann's Training School for Girls.
Mount Moriah Hospital of the Galician and Bucovinaen Federation.
Emanuel Hospital of New York.
St. Vincent's Hospital of the Borough of Richmond.
Bethany Day Nursery.
Association for Befriending Children and Young Girls.
The Maternity Aid Society.
Old Harlem Hospital.
Buffalo-Hahnemann Hospital.
Association for the Aid of Crippled Children.
Brooklyn Home for Blind, Crippled and Defective Children.
American Redemption Co.
Second United Cities Realty Co.
S. H. Kress & Co.
Nickel Plate Elevator Co.
El Facilo Cigar Co.
La Blanche Pattern Co.
Underwriters' Realty & Title Co.
Souvenir Post Card Co.
National Association of Mercantile Agencies.
Chevra Sfard Anshe Wolin Untershtizungs Verein.

AGRICULTURAL LAW.

The total number of violations of the agricultural and pure food laws referred to this office by the Agricultural Department during 1907 has been.....	1156
Numbers of these violations were against the same parties and were joined in one complaint, making the total number of cases brought by the State.....	947
The State has been successful by settlement or judgment in	491
Cases discontinued by reason of insufficient evidence, death of defendant, judicial decisions, etc.	80
Judgments were rendered against the People in.....	18
Number of cases still in hands of designated attorneys for prosecution	706

Amount of penalties and costs recovered and turned over to State Treasurer.....	\$26,475 98
Amount received in satisfaction of judgments and turned over to State Treasurer.....	2,435 67
Total	\$28,911 65

Amount paid for services and disbursements in the prosecution of agricultural cases during the year 1907, some bills having not been submitted or audited for the year.....	\$3,963 89
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IN THE FOLLOWING CASES JUDGMENTS HAVE BEEN RECOVERED IN FAVOR OF THE STATE, BUT REMAIN UNCOLLECTED.

Defendants and violations.	Amount of judgment.
E. Fredenberg, bob veal	\$128 05
Syracuse Rendering Co., C. C. F. S.	140 38

Defendants and violations.	Amount of Judgment
Jay H. Bedell, bob veal	\$1,530 53
Charles H. Bedell, bob veal	1,118 08
Ross R. Hollis, bob veal	479 23
Jay H. Bedell, bob veal	1,087 08
Charles Bolnert, vinegar	118 00
Pincus Kassen, mustard	63 00
Jay H. Bedell, bob veal	2,293 04
Abraham Jacobson, mustard.....	63 00
George Roberts, bob veal	213 77
Jay H. Bedell, bob veal	1,122 97
Squire Hill, bob veal	585 64
F. J. Wager, bob veal	211 92
Jay H. Bedell, bob veal	721 73
H. W. Heiseuring, milk	65 00
A. G. Henderson, milk	67 42
Elmer Booth, milk	68 42
August Wilkey, milk	140 96
A. Koster, milk, special	2,374 11
G. E. Ellsworth, bob veal	350 00
George Kapp, linseed oil	249 28
A. P. Melvin, bob veal	100 00
Lewis B. Mead, milk	93 83
E. M. Bull, bob veal	1,050 00
F. J. Wager, bob veal	211 92
Max Deixler, oleomargarine	55 00
D. Gilbert & C. Goldberg, oleomargarine	55 00
Gottlieb & Perlitz, oleomargarine	55 00
Schaefer & Kingsberg, oleomargarine	55 00
Henry Ziemonn, oleomargarine	60 00
C. H. Bedell, bob veal	329 35
J. Bleman, bob veal	411 89
Lieberman Dairy Co., milk, special	2,329 72
Frank Gerace, bob veal	127 80
Anna Archer, oleomargarine	107 50
Mary Mitchell, oleomargarine	107 50
Josephine Tice, oleomargarine	60 00
John Peterson, oleomargarine	107 50
Ella Laraboe, oleomargarine	107 50

Defendants and violations.	Amount of judgment.
Edwin Dottery, oleomargarine	\$107 50
Matilda Hespeth, oleomargarine	107 50
Lizzie Eppes, oleomargarine	107 50
Standard Dairy Co., milk	107 00
Michael Burgman, milk	57 00
Hamilton Dairy Co., milk	107 00
Harry Reuhl, bob veal	500 00
Ross R. Hollis, bob veal	325 86
The Moses-Straus Co., bob veal	57 00
*Emma Peterson, oleomargarine	117 00
*Anna Hiek, oleomargarine	60 00
*Charles Keiser, oleomargarine	60 00
*Wm. Peterson, oleomargarine	109 50
*Jacob Spurnburg, oleomargarine	60 00
*McKee & Van Dusen, oleomargarine	60 00
*Susan Mertz, oleomargarine	60 00
*Chas. Abrams, pepper	109 50
*James Goggins, oleomargarine	109 50
*Mary Thomas, oleomargarine	60 00
*Michael Appel, oleomargarine	109 50
*Mae S. Tewkesbery, oleomargarine	109 50
*Froelick Bros., vanilla extract	109 50
John W. Williams, bob veal	1,638 00
Total	\$22,864 48

Cases marked * were disposed of by New York City Bureau.

LIST OF ACTIONS IN WHICH THE PEOPLE WERE DEFEATED DURING 1907.

Defendants.	Offense.
William A. Demond	Milk, 4129
Lewis Andres	Milk, 15011, herd, 3980
Christian F. Miller	Milk, 13461, herd, 1637
Joseph Crossett	Milk, special
Fraziga Guito	Oleomargarine, 5196

Defendants.	Offense.
John Herlihy	Oleomargarine, 5526
John Owens	Oleomargarine, 5200
Ike Schneider	Oleomargarine, 5192
Olga Schultz	Oleomargarine, 5547
Frank J. Balthasar	Baking Powder
Floyd B. Tompkins	Milk, 14582
John Petrucci	Lard, 3044
E. C. Putnam	Evaporated apples, 3403
Isaac Terwilliger.....	Molasses, 13249
*Nathan Bokschitsky.....	Pepper, 955
*Philip Silverman.....	Pepper, 1006
*Bastine & Co.....	Lemon Extract, 2824
*Theodore Kruger.....	Oleomargarine, 5104

Cases marked * were disposed of by New York City Bureau.

JUDGMENTS RECOVERED BY THE DEFENDANTS AGAINST THE PEOPLE AND CERTIFICATES FOR COSTS SIGNED BY THE ATTORNEY-GENERAL.

Defendants and violations.	Amount of judgment.
Lewis Andres, Milk, 15011, herd, 3980	\$69 63
William A. Demond, Milk, 4129.....	63 63
Christian F. Miller, Milk, 13461, herd, 1637.....	68 30
Floyd B. Tompkins, Milk, 14582, herd, 4075	62 91
Frank J. Balthasar, Baking powder, 904.....	55 50
Joseph Crossett, Milk, special.....	92 92
Waters & Hulbert, Renovated butter.....	294 87
Eugene W. Peck, Maple syrup, 104.....	34 46
Edwin C. Putnam, Evaporated apples, 3403.....	60 67
Mary D. Newkirk, Milk, 11625; demurrer.....	68 44

STATEMENT OF PENALTIES AND COSTS COLLECTED DURING THE YEAR 1907.

Defendants and violations.	Penalty.	Costs.
Charles Maher, milk		\$17 00
Honecker & Ehman, maple syrup ...	\$50 00	
Adeline Burnham, milk	50 00	
Garfield Porter, milk	100 00	25 00
John Tobin, milk	100 00	25 00
George C. Agor, milk	50 00	10 00
*F. C. Krumdieck & Sons, pepper ...	50 00	
W. F. Clark, bob veal	50 00	
Orville Mickel, milk	50 00	
Charles E. Edgett, evaporated apples	50 00	27 00
Ward W. Signor, milk	50 00	
Ellen A. Hall, milk	50 00	
*J. W. Derleicks, honey	100 00	
*Daniel Reeves, pepper	50 00	
William R. Stage, milk	50 00	
Allie Hopper, milk	50 00	
*F. W. Schimmerling, oleomargarine.	50 00	
*Erich Wirth, lemon extract	50 00	
*C. N. Hahn, lemon extract	50 00	
*F. J. Murray & Co., bob veal	100 00	
Andrew Albrecht, milk	50 00	
John J. Schram, milk	50 00	19 24
*Bahrenburg & Tiedman, pepper ...	50 00	
*R. R. Reilly Co., coffee	50 00	
Doolittle & Johnson, evap. apples...	50 00	29 84
Henry Gokey, milk	50 00	
Clarissa B. Rounds, milk	50 00	
Amanzo W. Allen, milk	50 00	
M. H. Kingman, diseased meat	100 00	40 00
A. S. Davis, bob veal	50 00	
*Pierson E. Sanford, milk	50 00	
Robert R. Conklin, milk	50 00	
Robert R. Conklin, milk	50 00	26 24

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	Costs.
*John Gillio, oleomargarine	\$50 00	
*William Baum, pepper	50 00	
Charles Patnode, milk	50 00	
William Gregory, milk	50 00	
Isaac Vosburg, milk	50 00	\$29 72
John D. Huntley, milk	50 00	17 50
George Hummell, milk	50 00	26 00
James W. Nellis, milk	50 00	
John Schaefer, tomato catsup	50 00	
W. E. Huggans, bob veal	50 00	29 00
*Thorndale Farm Dairy Co., milk ..	50 00	3 00
*Simpson, Crawford & Co., lemon ext.	50 00	
H. A. Skinner, milk	50 00	
Fred Weimert, maple sugar	50 00	
*G. H. A. McClare, coffee	50 00	3 00
*John Garborino, pepper	50 00	3 00
*Barney Levy, nut oil	50 00	3 00
*Frank Nicolaus, pepper	50 00	3 00
*Evert W. Shaw, milk	50 00	3 00
*William Nelson, milk	50 00	
*Orthmann Bros., lemon extract	50 00	3 00
Lieberman Dairy Co., milk	500 00	
Charles Wilcox, bob veal	50 00	
Robert K. Webb, milk	100 00	
Max Schott, maple sugar	50 00	
The Palace Tea Co., baking powder.	50 00	
William J. Sternberg, milk	50 00	25 00
J. G. Pieri & A. Buscaglia, olive oil.		25 00
Bordwell and others, milk	50 00	
A. G. Henderson, milk	50 00	15 00
*Ernest H. Mattens, vanilla extract..	50 00	
*D. Meyer, vinegar	50 00	
*Edgar Shoemaker, milk	50 00	3 00
*Sophia Scherpf, nut oil	50 00	
James Havens, milk	50 00	
Moran & Underdown, milk	50 00	
*John C. Schriver, vinegar	50 00	

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	Costs.
*Wayne County Produce Co., vinegar	\$50 00	
*J. A. Dowat's Sons Co., vinegar ...	50 00	
*Edgar Shoemaker, milk	50 00	
E. H. Creighton, milk	50 00	
*Charles Behnke, pepper.....	50 00	\$8 00
Gertrude Cicognani, olive oil	50 00	
Daniel Taylor, milk	50 00	25 00
J. J. Prentiss & Co., and Uberta Partridge, lard	50 00	26 00
J. B. Oaks & Lee Wells, evap. apples.	50 00	
James Burns, milk		25 00
New York Fruit Growers' Assn., com. fert.	100 00	
George Graefer, milk	80 00	
Charles Schindel, milk		
A. M. Gifford, milk.....		
James J. Flynn, milk.....	50 00	
Hannah Buckbee, milk	50 00	39 53
*Otto Rathgeber, oleomargarine.....	50 00	3 00
*John B. Friors, oleomargarine.....	50 00	3 00
*Charles Binder, oleomargarine.....	50 00	
*Frederick Jaeger, oleomargarine....	50 00	
Wilson & Wolven, C. C. F. S.....	50 00	15 00
Keeley & Doyle, evaporated apples..	50 00	
*Rose Gottlieb, pepper.....	50 00	3 00
*Andrew Peters, vinegar.....	50 00	10 00
*Fred H. Tuting, milk.....	50 00	
*Pekovitch Bros., vanilla extract....	50 00	4 00
*Samuel Knapf, oleomargarine.....	50 00	
*Theo. Waldfogel, oleomargarine ...	50 00	
*Carl Tastensen, vanilla extract.....	50 00	3 00
John Quigley, milk.....	50 00	
Sherman & Miller, milk.....	50 00	
R. D. McCaig, milk.....	50 00	
B. Wooster Healey, milk.....	50 00	
*R. H. Elfero, vanilla extract.....	50 00	3 00
*Lewis Deitsch, milk.....	50 00	3 00

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	Costs.
*Henry Katz, oleomargarine.....	\$50 00	
*William Texter, oleomargarine.....	50 00	
*Henry Degenhardt, oleomargarine..	50 00	
*R. M. Goodheart & Co., vanilla extract	50 00	
Schutt & Hopkins, milk.....	50 00	
Augustus Albero, milk special.....	50 00	
*Edward Rafter, vanilla extract.....	50 00	\$3 00
*Mrs. Richard Brennan, oleomargarine	50 00	
*Anchel Cohen, oleomargarine.....	50 00	
*Alfred Richardson, oleomargarine..	50 00	
Edgar Shoemaker, maple syrup.....	50 00	
*Rafferty & Hosier, vanilla extract...	50 00	
*Mary Hennessey, oleomargarine....	50 00	
*Conron Bros., oleomargarine.....	50 00	
*Grove Griffith, oleomargarine.....	50 00	
George Crowe, milk.....	50 00	30 00
Daniel Brown, milk.....	50 00	
Jerry De Mar, milk.....	50 00	27 75
W. C. Fisher, Hamburg steak.....	50 00	27 00
*Edward D. Depew & Co., pepper....	50 00	
Flickenger Grocery Co., lard com- pound	100 00	25 00
*Charles Heiden, oleomargarine.....	50 00	
*Frederick Werner, oleomargarine...	50 00	
*Brennan & Oxley, oleomargarine....	50 00	
*Max Fehr, oleomargarine.....	50 00	
*Henry Haubrecht, oleomargarine....	50 00	
Jacob Marks, strawberry preserves..	50 00	15 00
Hodgkins Poultry Supply House, C. C. F. S.	50 00	
Max Levinson, milk	50 00	
Hyman Levin, milk.....	50 00	17 50
W. J. Shull, bob veal.....	50 00	
William A. Kipp, milk.....	50 00	
Frank Ryder, milk.....	50 00	30 00
A. Slingerland, bob veal.....	50 00	
*John Liberle, oleomargarine.....	50 00	

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	Costs.
Hetfield Extract Co., vanilla extract.	\$50 00	
*Nathan Schefrie, oleomargarine....	50 00	
*Thomas O'Keefe, oleomargarine....	50 00	
*Louis Sternlieb, oleomargarine.....	50 00	
*William Zimmerman, oleomargarine.	50 00	
Alexander Levy, oleomargarine.....	50 00	
Gerhardt Stauder, oleomargarine....	50 00	
Anna Tierney, oleomargarine.....	50 00	
William Weik, oleomargarine.....	50 00	
Elmer A. Hyde, milk.....	50 00	\$25 00
James McClure, renovated butter...	50 00	
*Barney Witaskin, oleomargarine....	50 00	
*Jeliffe, Wright & Co., bob veal....	100 00	
Henry Kampmann, oleomargarine...	50 00	
Benjamin Stearn, oleomargarine ...	50 00	
*Henry Lampel, oleomargarine.....	50 00	
*C. Heiden, oleomargarine.....	50 00	
*Paul C. Townsend, oleomargarine...	50 00	
Leo Fox, oleomargarine.....	50 00	
Carmella & Pietro Manzella, olive oil.	50 00	26 00
*John E. Heiderscheid, oleomargarine.	50 00	
*Otto Prell, oleomargarine.....	50 00	
*Henry Schmidt, oleomargarine.....	50 00	
*Louis J. Sice, oleomargarine.....	50 00	
*Louise Theil, oleomargarine.....	50 00	
*Mrs. Sophia Lawson, oleomargarine.	50 00	
*Charles Bockleman, oleomargarine..	50 00	
Joseph Alderman, sausage.....	50 00	
J. Frey, sausage.....	50 00	
Charles C. Mahns, sausage.....	50 00	
Maurice Roth, oleomargarine.....	50 00	
*William A. Willan, oleomargarine...	50 00	
Isaac Hochberg, oleomargarine.....	50 00	
Palace Tea Co., baking powder.....	100 00	52 00
*Abraham Halpron, nut oil.....	50 00	
John H. Mann & Co., molasses and pepper.	100 00	31 00

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	Costs.
*John D. Stover, oleomargarine.....	\$50 00	
William Smith, bob veal.....	50 00	
Gilbert & Nichols Co., C. C. F. S...	50 00	
T. & F. D. Treep, olive oil.....	50 00	
J. P. Tucker or Leslie Palmer, bob veal.	50 00	\$25 00
Henry & Missert, C. C. F. S.	50 00	27 00
Stephen Pieri, olive oil	50 00	28 03
*Sarah Hawkins, oleomargarine	50 00	3 00
Fred A. Bailey, milk	50 00	27 50
Juckett & Staples, milk	50 00	26 50
*Carl S. Milowitz, oleomargarine	50 00	3 00
William B. Waters, molasses	50 00	26 00
Buffalo Fertilizer Co., com. fert. ...	450 00	
*Fred Weinstein, oleomargarine	50 00	
J. J. Harrigan, extract vanoleum ..	50 00	26 00
E. B. Colson & Co., com. fert.	50 00	
Graham & Vodra, com. fert.	100 00	
McGrillis & Co., com. fert.	50 00	
George Kepfinger, quarantine viola- tion		27 00
*Abargo & Baroni, oleomargarine ..	50 00	3 00
C. W. Williams, milk	50 00	
Vincenzo Coppola, olive oil	50 00	25 00
Silas Rowe, milk	50 00	30 00
Schaefer & Schoenberger, sausage ..	150 00	
William B. Newton, milk	100 00	
Samuel Gile, bob veal	50 00	
Mary Elsaeer, baking powder	50 00	26 00
*Simpson, Hendee & Co., C. C. F. S. .	100 00	
Charles Benschnneider, milk	50 00	15 00
*James Duncan, oleomargarine	50 00	
*Max Maicofoits, oleomargarine	50 00	3 00
*Lena Granich, oleomargarine	50 00	3 00
*John Erbe, oleomargarine	50 00	
*Maurice Belowsky, pepper	50 00	
*Frank Lauri, vinegar	50 00	
M. F. Smith, milk	50 00	

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	COSTS.
*Henry Uffen, oleomargarine	\$50 00	\$3 00
*Wolvin & Davedoff, pepper	50 00	
*Andrew Dunning, oleomargarine ...	50 00	
W. Wirt Wickes, syrup and molasses	50 00	
John Harrigan, milk	50 00	
William Duncan, milk	50 00	
E. Cole & Son, C. C. F. S.	50 00	
Columbia Tea Co., mustard	50 00	26 00
John H. Auer, sausage	50 00	
Jacob Voldenaire, sausage	50 00	
*Frank Jowaizas, pepper	50 00	
Big Elm Dairy Co., cream	50 00	15 00
*Abraham Natanson, oleomargarine .	50 00	
Austin I. Pierce, milk	50 00	25 00
Jonas Goldwitz (Columbia Tea Co.), lemon extract	50 00	
F. W. Horton, lemon extract	50 00	
Frank Nicholai, milk	50 00	26 00
Cosmas Mastarakos & Co., oleomarga- rine	50 00	10 00
Gartland & Perego, Hamburg steak .	50 00	
Reed & Powell Transportation Co., com. fert.	50 00	25 00
Thomas W. Egan, molasses	50 00	26 00
Harvey Seed Co., com. fert.	50 00	
Charles Alley, milk	50 00	
Abram Coapman, milk	50 00	
F. W. Brooks, bob veal	150 00	25 00
McLaren Cheese Co., cheese	100 00	
Andrew Kohler, sausage	50 00	
Joseph Veltz, sausage	50 00	
Weltzer Bros., sausage	50 00	
Wm. A. Husbands & Co., sausage..	100 00	
John A. Seel & Co., cream cheese ..	50 00	15 00
Wilkins & Kroll, sausage	50 00	15 00
James Butler, vanilla extract.....	100 00	30 00
B. H. Tracy, com. fert.	50 00	13 50
Herbert A. Adams, com. fert.	50 00	13 50

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	Costs.
Great Atlantic & Pacific Tea Co., baking powder, lard, maple syrup, syrup.	\$150 00	
Charles G. Smith, renovated butter .	50 00	
H. Foster, com. fert.	50 00	
O. W. Clark & Son, com. fert.	50 00	
A. H. Case & Co., com. fert.	50 00	\$25 00
H. W. Bowes & Co., C. C. F. S.		27 00
A. Raynor, C. C. F. S.	100 00	26 00
Josephine Colson, milk	50 00	15 00
James L. Reynolds, com. fert.	100 00	26 60
J. A. Taylor, lard	50 00	
Charles A. Goetz, buckwheat flour .	50 00	26 00
Flickenger Grocery Co., jelly	50 00	26 00
Frank Heigis, lard	50 00	26 00
E. A. Crandall, lard	50 00	26 00
Salvatore Mirabito, mustard and lard	50 00	16 00
*D. W. Romaine, C. C. F. S.	100 00	
*Stumpp & Walton Co., com. fert. . .	50 00	
*Sheffield Farms (Slawson Decker Co.) maple syrup	50 00	
*John W. Williams, bob veal	50 00	
Charles Tice, bob veal	50 00	
R. A. Miller, oleomargarine	50 00	
J. W. Matthews & Co., pepper	50 00	
Van Brunt, Maynard & Co., canned beans	50 00	
A. C. Loucks, milk	50 00	
Loren Lee and Fred Lee, bob veal . .	50 00	
James Butler, lard, com.	100 00	26 60
F. Ranscht, lard, com.	50 00	
Frank Bambara & Bro., lard, com. .		10 00
J. H. Landers, com. fert.	50 00	25 00
H. Rogers & I. Rogers, milk	50 00	29 74
Cape Vincent Seed Co., C. C. F. S..	50 00	26 73
Joseph Baumert, C. C. F. S.	50 00	25 00
Weldon & Weldon, C. C. F. S.	51 80	27 00

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	Costs.
C. P. McDonald, C. C. F. S.	\$50 00	
Mittenmaier & Son, com. fert.	50 00	
Mrs. Peter Finen, milk	50 00	
C. E. Zartman, maple syrup	50 00	\$41 00
George J. Heinold & Son, plum butter	50 00	27 00
Joseph Shaw & Son, bob veal	200 00	
Howard J. Viele, ham in casing	50 00	
Howard J. Viele, Hamburg steak ..	50 00	
Horace L. Burrill, olive oil	50 00	26 00
Henry F. Herrling, chopped meat ...	50 00	
George S. Stewart, milk	100 00	
J. T. Paddleford, bob veal	100 00	15 00
John Lorimer, bob veal	50 00	
R. W. Hallock, com. fert.		27 00
Mascott Bros., baking powder	50 00	29 00
John W. Potter, baking powder ...	50 00	26 00
G. Longs, com. fert.	50 00	26 00
Stewart Elmer, milk	50 00	10 00
J. & S. Cohen & D. Feitelson, milk..	50 00	
William L. Briggs, milk	50 00	
Charles Barton, milk	100 00	
John W. Weber, milk	100 00	
J. P. Ellis, bob veal	50 00	
Charles A. Grimshaw, milk	50 00	25 00
Herman Sklamberg, vanilla extract.	50 00	25 00
Blackman Bros., molasses	50 00	
M. P. Mills, lard	50 00	
Daniel Manchester, milk	50 00	27 60
Chris. Vagts, milk, special	500 00	35 00
George F. White, milk	50 00	
Milton C. Rouse, bob veal	50 00	
Charles G. Coonrad, milk	50 00	
John Broderick, milk	50 00	
F. H. Read, lard	50 00	
Alvar Vameer, milk	100 00	
American Grocery Co., lard	50 00	25 00
Harry Vaughn, milk	50 00	
John A. Culver, milk	50 00	

Defendants and violations.	Penalty.	Costs.
James C. Barthelson and ano., milk.	\$50 00	
Andrew Gahan, bob veal	50 00	
Stephen Pratt, milk	50 00	
George H. Burleson, milk	50 00	
E. R. King, bob veal	50 00	
E. T. Sherman, milk	50 00	
Ruth Sanders, milk	50 00	
Frank Hauser, milk	50 00	
George S. Wiltsey, milk	50 00	
Curtis & Swain, milk	50 00	\$40 00
Lott D. Black, milk	50 00	27 50
E. C. Starkweather, bob veal	350 00	27 00
A. Horn's Sons, C. C. F. S.	50 00	
Rosa & Cullota, olive oil	50 00	
J. G. Ellsworth, bob veal	50 00	
Frank Holdraker, evaporated apples .	50 00	
Clarence Hallaver, evaporated apples	50 00	
Billings & Pinkney, evaporated apples	50 00	
Levi Dunkle, milk	50 00	
Samuel Richner, milk	100 00	
Floyd Shoemaker, milk	100 00	
Madison Ogden, milk	50 00	
Mary O. Newkirk, milk	50 00	18 44
Carl Schmidtka, milk	100 00	
George A. Miller, milk	50 00	25 00
Carrie Clark, milk	50 00	
George Loomis, milk	50 00	
Jay F. Frisbee, milk	50 00	
Howe & Kennedy, milk	50 00	
Dayton C. Leaty, milk	50 00	43 15
Martin Brauner, milk	50 00	29 27
*Ignatus Gross, milk	50 00	
T. S. Moses, milk	50 00	
William Kahnmunch, evap. apples..	50 00	
Charles J. Fisher, lemon extract ...	50 00	26 00
Mary E. Wilson, milk	100 00	18 00
Fred Sawyer, milk, special	50 00	27 50
A. Burrell Strong, milk, special....	100 00	

* Disposed of by New York City Bureau.

Defendants and violations.	Penalty.	Costs.
D. W. Fuller, milk.....	\$100 00	
Nicosia Bros., milk, special.....	100 00	\$14 00
Philip Litsky, cream	50 00	7 00
William Fattey, dog quarantine ...	35 00	
Mary A. Morner, milk	50 00	
Robert W. Hallock, com. fert.	77 50	15 00
The Coe Mortimer Co., com. fert....	50 00	27 25
Michael Pimrich, milk	50 00	
Elmer H. Morse, milk	50 00	
James M. Nolan, com. fert.	50 00	27 50
Frank Herbert, milk	50 00	
Walter J. Hoff, milk	50 00	
Fred Schuer, oleomargarine	50 00	8 00
John H. Stellman, milk	50 00	8 00
Powell Bros., linseed oil	100 00	
Bigsbee & Abrams, milk	50 00	
J. W. Wood, lard	50 00	
M. T. Shank, milk	50 00	36 10
Frank Kibling, milk	50 00	
John E. Cooney, pepper	50 00	
Joseph H. Berg, milk	50 00	
A. Van Sicklen, com. fert.	50 00	10 00
James Van Sicklen, com. fert.	50 00	10 00
A. J. Van Sicklen & Son, com. fert.	50 00	10 00
J. J. Rider, com. fert.	50 00	10 00
John McCauley, spices	50 00	
A. N. Grippen, lard	50 00	
Steele & Shopmeier, lard	50 00	
F. C. Fisher, Hamburg steak	50 00	41 00
George B. Davis, olive oil	50 00	41 00
D. S. McMartin, renovated butter ..	50 00	
Cornelius Yonker, milk	50 00	
Charles T. Fisher, mustard	50 00	26 00
Clarence Schermerhorn, milk	50 00	
American Grocery Co., lard	50 00	
William Goulden, lard	50 00	
E. P. Van Liew, lard	50 00	
William Weckerle, milk	50 00	

Defendants and violations.	Penalty.	Costs.
W. Webber, bob veal.....	\$100 00	
J. R. Simmons, pepper	50 00	
Albert Deyoe, milk	50 00	
E. C. Starkweather, bob veal	50 00	\$26 00
Charles B. Andrus, milk	50 00	
B. Gates, mustard	50 00	
John Pope, milk	100 00	25 00
John McKinney, milk	51 35	
S. S. Hoff, lard	50 00	
	<hr/>	<hr/>
	\$23,595 65	\$2,880 33
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JUDGMENTS COLLECTED DURING THE YEAR 1907.

Defendants and violations.	Amount of judgments.
Carl J. Nillson, oleomargarine	\$60 00
*Rose Gottlieb, pepper	58 00
*Peter Duryea & Co., C. C. F. S.	109 50
Samuel Riolin, vanilla extract	70 00
John E. Rosasco, milk	57 00
Kennetz & Hoffman, milk	158 43
Herman Kessler, milk	140 00
Peter Hecker, milk	82 72
*Fred Kook, nuss oil	60 00
Thomas Lacy, bob veal	181 10
John McFeeley, bob veal	200 00
B. F. & J. N. Harrington, milk	178 92
*Nathan Messinger & S. Kirschner, pepper	63 00
S. Breakstone & A. Levine, cream	57 00
John Jetter, milk	57 00
D. C. Hoagland, C. C. F. S.	140 20
*Wilhelm Gurtman, oleomargarine	60 00
*Emanuel Solomon, oleomargarine	60 00

Cases marked * were disposed of by New York City Bureau.

Defendants and violations.	Amount of judgments.
Crow and Williams, com. fert.....	\$129 45
*Ernest Winderhoff, oleomargarine	118 00
Helen Kelley, oleomargarine	67 10
*John Blacknedel, vinegar	63 00
*Austin, Nichols Co., maple syrup	152 25
*Pasquala Romo, oleomargarine	53 00
*Henry Nielsen, oleomargarine	60 00
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	\$2,435 67
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Cases marked * were disposed of by New York City Bureau.

FINES IMPOSED IN CRIMINAL ACTIONS BROUGHT BY THE NEW YORK CITY BUREAU FOR VIOLATIONS OF THE AGRICULTURAL LAW.

March	13.	People v. George Thompson.....	\$50 00
April	5.	People v. James Otten.....	200 00
	15.	People v. Richard Roe or James J. Mc- Keon	150 00
Oct.	2.	People v. Frank Teale.....	50 00
	29.	People v. George Thompson.....	100 00
Dec.	6.	People v. James H. Prescott.....	50 00
			<hr/>
			\$600 00
			<hr/>

(The amount of the fines collected are now in the hands of the Comptroller of the City of New York.)

CASES ON APPEAL.

Cases on appeal disposed of during the year 1907:

COURT OF APPEALS.

People v. William B. Waters and James O. Hurlbert, Renovated Butter, No. 454. Appeal by plaintiff from affirmance of judgment by Appellate Division, Fourth Department, by a divided court. Judgment affirmed. Court, however, determined the question that "oral warning by the seller that the butter is renovated butter is no excuse for a failure to comply with the statute."

APPELLATE DIVISION — FIRST DEPARTMENT.

People v. George Cloos, Milk, No. 8774. Appeal from judgment of \$211.38 for plaintiff rendered October 5, 1903. Affirmed by Appellate Division June 14, 1907, with costs.

People v. Anton Koster, Milk, special. Appeal from judgment of \$2,374.11 for plaintiff, rendered April 27, 1907. Affirmed, November, 1907. Holding that accumulated penalties may be collected in the one action.

APPELLATE DIVISION — FOURTH DEPARTMENT.

People v. C. L. Briggs, Milk, section 22. Appeal from judgment of \$100 and costs for plaintiff. Judgment affirmed October term, 1907. Costs taxed \$71.47.

People v. Louis Luke, Tomato Ketchup, No. 1987. Appeal by plaintiff from order dismissing complaint on ground that Tomato Ketchup was a "distinctive name" and ingredients need not be stated on label. Reversed, new trial granted, November Term, 1907.

People v. John Weaver, Milk, No. 8516. Appeal by People from judgment in favor of defendant. Reversed. New trial January, 1907.

APPELLATE TERM — NEW YORK COUNTY.

People v. Austin, Nichols & Co., Maple Syrup, No. 314. Appeal from judgment for People. Municipal Court, Eleventh District, August 26, 1905, for \$100 and costs. Affirmed March Term, 1907.

The following cases are pending in Appellate Courts:

COURT OF APPEALS.

People v. C. L. Briggs, Milk, section 22. Appeal by defendant from affirmance of judgment by Appellate Division, Fourth Department. Notice of Appeal served.

APPELLATE DIVISION — SECOND DEPARTMENT.

People v. E. M. Bull, Bob Veal. Appeal by defendant from judgment of \$1,050 in favor of People, rendered October Term, Supreme Court, Orange county. Appeal not completed.

APPELLATE DIVISION — FOURTH DEPARTMENT.

People v. Liberman Dairy Co., Milk special. Appeal by defendant from judgment of \$2,329.72 for People rendered Supreme Court, Lewis county, December 11, 1907.

APPELLATE TERM — NEW YORK COUNTY.

People v. John W. Williams, Bob Veal 4572 to 4585. Appeal by defendant from judgments in favor of People, rendered in Municipal Court, aggregating \$1,638, being \$100 penalty and \$17 costs in each of fourteen cases. Appeal not completed.

CASES DISCONTINUED DURING THE YEAR 1907 AND REASONS THEREFOR:

Recommendation of Commissioner of Agriculture, Opinion of the Attorney-General interpreting the Pure Food Law, Death of Defendants, Statute of Limitations, or Insufficient Evidence to Sustain Action.

Defendants and violations:

Elizabeth Pollock, Maple syrup, No. 1995.

Edmund Greaves, Maple syrup, No. 777.

- E. G. Taylor & Bro., Special.
Charles Miller, Jr., Molasses, No. 2328.
Mena Hohn, Syrup, No. 2326.
Mena Hohn, Lemon extract, Nos. 1184-1189.
Wisely Bros., Maple syrup, No. 1230.
E. E. Darling & Co., Vanilla extract, 2606-2611.
Hydraulic Milling Co., C. C. F. S., No. 807.
A. Walurath, Lemon extract, Nos. 759-755.
C. M. Osborne Co., Lemon extract, No. 766.
Halloran & Son, Lemon extract, No. 807.
Columbia Tea Co., Lemon extract, No. 730.
Jerry Rogan & Sons, Lemon extract, No. 786.
Andrews, Loomis & Andrews, Lemon extract.
Bernard Heuke, Nut oil, No. 1039.
E. F. Kaestner Mfg. Co., Nuss. oil, No. 369.
John J. Tookey, Syrup, No. 246.
Adelaide Legasse, Oleomargarine, No. 5145.
Jane Cassidy, Oleomargarine, No. 5602.
M. J. Boss Vanilla extract, No. 843.
J. Serlin, Molasses, No. 851.
*Fred Kaiser, Lemon extract, No. 958.
Abram P. Krakaur, Vanilla extract, No. 1919.
The Waverly-Sayre Co., C. C. F. S., No. 1136.
Orin Fox, Bob veal, Nos. 6458-6460-6441.
Jesse Durland Park Farm Dairy Co., Milk special.
D. Bradt, Turpentine, No. 1356.
Polk, Calder & Co., Turpentine, No. 1354.
Syckoff & Merritt, Bob veal, No. 4656.
Edwin J. New, Milk, No. 12891.
Miscosla Cruciano, Lard, No. 823.
Peter Delasse, Evaporated apples, No. 673.
S. W. Lewis, Bob veal, Nos. 3446-3467-3439-3488-3486-
3445-3903-3904-3961-3455.
George Oliver & Co., Bob veal, Nos. 423-424.
Jeliffe, Wright & Co., Bob veal, Nos. 6558-6562.
Dennis & Herring, Bob veal, Nos. 6178-6183-6272-6278.
Steers & Meuke, Bob veal, Nos. 4551-4560.
W. H. Mowerson, Bob veal, Nos. 418-420.

* Disposed of by New York City Bureau.

- Frank Caswell, Syrup, No. 911.
L. S. Hart, Molasses, No. 2464; Syrup, No. 2465.
C. J. Bedford, Lemon extract, Nos. 1192-1193.
*Leslie Dunham & Co., Honey, No. 149.
*Jacob Rosen, Pepper, No. 1029.
*Anna Hausee, Pepper, No. 1073.
*William Jordan, Vanilla extract, No. 380.
*Jacob Roeser, Vanilla extract, No. 1032.
*James Butler, Molasses, No. 322.
*B. W. Otis & Co., Bob veal, No. 636.
*Siegfried Rown, Maple syrup, No. 155.
*Charles Wiesbecker, Maple syrup, No. 154.
*John Aceveada, Oleomargarine, No. 5199.
*Sapan & Elinsky, Lemon extract, No. 5199.
*Louis Siegel, Milk, No. 2827.
*Albert W. Williams, Milk, No. 14007.
*William Klein, Pepper, No. 921.
*Benjamin Ivory, Oleomargarine, No. 5138.
*Rudolph Greiner, Oleomargarine, No. 5136.
*Charles Macholdt, Oleomargarine, No. 4972.
*Fannie Mendelowitz, Oleomargarine, No. 5559.
*Sigmund Mescolosi, Vanilla extract, No. 336.
*Joseph Menne, Oleomargarine, No. 4994.
*Jacob Feldman & Co., Vanilla extract, No. 1024.
*Feinstein & Goldberg, Oleomargarine, No. 5197.
*Marshall Horton, M. F. Mieblang, Oleomargarine, No. 4979.
*Morris Fuer, Pepper, No. 331.
*August Krogmann, Honey, No. 462.
*Marshall R. Horton, Pepper, No. 916.
*M. Weiner, Linseed oil.
*Bolton Bros., Linseed oil.
*August Whitman, Pepper, No. 1012.
*John Göetz, Oleomargarine, No. 5522.
*Otto Grum, Vanilla extract, No. 328.
*Max Dugan, Maple syrup, No. 101.
*George Rippergen, Com. fertilizer, No. 1578.
*Frank Sandson, Oleomargarine, No. 4978.

* Disposed of by New York City Bureau.

*James Howard, Oleomargarine, No. 4981.

*Selma Purchase, Oleomargarine, No. 4983.

*Anna Murphy, Oleomargarine, No. 4989.

Andrew W. Hicks, Com. fertilizer, No. 1975.

James Jacobs, Turpentine, No. 1353.

Cases marked * were disposed of by New York City Bureau.

REPORT OF DEPUTY IN CHARGE OF NEW YORK CITY BUREAU.

There were two cases arising under the Mortgage Tax Law, the People ex rel. The Henry Elias Brewing Company against Frank Gass as register of the county of New York, and the People ex rel. The Cooper Union for the Advancement of Science and Art against Frank Gass as register of the county of New York. (For a full report as to these two actions, see pp. 13-14.)

With reference to the other matters in my charge since the 1st day of January, 1907, to date, I beg leave to submit the following report:

Habirshaw vs. Isler (3 cases).

These were surplus money proceedings and the questions of law involved in each of them were:

(1) Are nonresident aliens possessed of inheritable blood so that upon their death intestate there was a transmission to those who would otherwise answer the description of their heirs-at-law of the real property devised to them by a citizen of the United States;

(2) If such nonresident aliens had not under the laws of the State of New York inheritable blood, that is, capacity to transmit by hereditary descent real property situated in this State, was it the intention of article V of the treaty of 1855 between the United States of America and the Swiss Confederation (of which country those who claimed to be heirs-at-law of the nonresident aliens who died intestate were residents) to override the State law in this respect and bestow such power upon nonresident aliens; and

(3) If such were the intention of said treaty was it not an unwarrantable exercise of the treaty-making power and, therefore, unconstitutional.

These matters originally came before a referee, who, in his report, decided the above questions in the affirmative. When I assumed office on January 1st, the appeals from the orders entered upon the confirmation of the referee's reports had been perfected and as the legal questions involved not only a construction of the statutes of this State with reference to the capacity of nonresident aliens to transmit by hereditary descent real property situated in this State, but if that question were decided in the negative, the extent to which the United States government may go by treaty in abrogating the laws of this State upon the subject, I prepared a brief for the Appellate Division and argued the matters there in May of this year. That court subsequently decided that the Statute of 1897 (sec. 5-a of the Real Property Law) gave to nonresident aliens the capacity to transmit by hereditary descent. An appeal was thereafter taken to the Court of Appeals, which affirmed the orders of the Appellate Division without opinion.

Haley vs. Sheridan.

This was an action in partition and the questions involved were:

(1) Whether or not a nonresident alien, who at the time of his death was a citizen and resident of a nation which by its laws confers on citizens of the United States privileges similar to those specified in section 5-a of the Real Property Law, but who had never filed the deposition required by section 4 of the Real Property Law and who had died intestate seized in fee of real property in this State subsequent to the passage of chapter 593 of the Laws of 1897, had capacity to transmit such real property by hereditary descent; and

(2) Whether the widow of such nonresident alien, herself a nonresident alien, was entitled to dower in said property.

Both of these questions were decided in the affirmative by the Appellate Division of this department in July, 1905. (See *Haley v. Sheridan*, 107 App. Div. 17, O'Brien, J., dissenting.) An appeal was thereafter taken to the Court of Appeals by the then Attorney-General, Hon. Julius M. Mayer. Early in

January of this year I made an application to the Court of Appeals to have the matter heard as a preferred cause. This application was denied and, because of the condition of the Court of Appeals' calendar, the matter was not argued until recently. Mr. O'Brien, formerly in charge of this office, prepared the brief for the Court of Appeals, and, in addition to the questions raised in the Appellate Division, were presented two additional questions, to wit, the construction of the treaty between the United States and Great Britain (of which country the nonresident alien was a resident at the time of his death), and whether or not it was proper for the Appellate Division to grant costs against the People of the State of New York upon the reversal of the interlocutory judgment and upon the affirmance of the modified final judgment. The Court of Appeals affirmed the judgment, with costs. I am informed that the court wrote an opinion, but although I have written for a copy of it, I have not yet received it.

Bischoffsheim vs. Paine.

This was an action in partition and the question involved is the right of a woman, a citizen of the United States, who marries an alien, to transmit by hereditary descent to the issue of the marriage and their descendants real property situated in this State of which she died seized. This action was commenced in January, 1904. I am clearly of the opinion that under section 6 of the Real Property Law "the foreign born children and descendants of any such woman are, notwithstanding her or their residence or birth in a foreign country, entitled to inherit from their mother," and in view of the decisions in *Haley v. Sheridan* and *Habirshaw v. Isler*, I have concluded to interpose no exceptions to the report of the referee recently entered in this action.

People vs. Cahill.

This was an indictment for false swearing before a Deputy State Superintendent of Elections in an investigation conducted by him into the alleged illegal registration of the defendant and two others. The case was tried on December 7th and 8th, 1905. The jury rendered a verdict of guilty and the defendant was sentenced to serve a term of two years in Sing Sing. On motion

of defendant's counsel, Judge Marean, on the 15th day of December, 1905, granted a certificate of reasonable doubt and admitted the defendant to bail pending appeal. This was the condition in which I found the matter on January 1st, 1907. I prepared a brief and argued the appeal on the 19th day of April, 1907. The court has not yet rendered its decision.

The questions involved in *People v. Cahill* are numerous and important. Defendant's counsel attacked the constitutionality of the act creating a metropolitan elections district (chapter 689, Laws of 1905) upon three grounds:

(1) That the act compelled the defendant to be a witness against himself;

(2) It violates the home rule article of the Constitution of the State of New York (sec. 2, art. X thereof);

(3) That it delegates to an official judicial functions not authorized by or within the purview of the Constitution of the State of New York.

There were also other questions involving the competency of testimony adduced upon the trial and an alleged fatal variance between the indictment and the proof.

East River Gas Company of Long Island City vs. The City of New York and State of New York.

These were proceedings instituted by the East River Gas Company, during the administration of Attorney-General Cunneen, to acquire by eminent domain certain easements and rights of way in, under and across Ward's Island and the East River between the foot of East 110th Street in the Borough of Manhattan and Astoria, Long Island, for the purpose of construction by the gas company of a tunnel to be used in supplying gas to the inhabitants of the City of New York. An answer was interposed by Attorney-General Cunneen denying that the gas company was authorized to acquire by condemnation any property belonging to the State, and also denying that the easements and rights of way sought to be acquired were necessary for the purposes set forth in the petition. After a trial at Special Term, an interlocutory judgment was entered in favor of the gas company and commissioners were appointed to fix the compensation for the property of the city and of the State. For the lands under

the waters of the East River belonging to the State the commissioners awarded the sum of \$500, and for the easements and rights of way taken on Ward's Island they awarded the sum of \$5,028. To what proportion of this latter award the State, as lessee of Ward's Island, is entitled, the commissioners did not determine.

A motion to confirm the report of the commissioners was made by the gas company and this application was denied upon the ground that the awards made to the city and the State were totally inadequate and insufficient, and also upon the ground that the failure of the commissioners to apportion the awards between the city and the State was error which justified the court in refusing to confirm their report. A motion for a reargument of the motion to confirm the report of the commissioners was subsequently made by the gas company and denied. From the orders denying both of these motions the gas company appealed to the Appellate Division. This was the status of the matter as I found it on January 1st, 1907. I prepared briefs upon both appeals and argued them before the Appellate Division in this department, in May. The order denying the application for a reargument was affirmed. The order denying the application to confirm the report of the commissioners was reversed and the motion made by the gas company for the confirmation of the report was granted, the court holding that there was no evidence adduced on the part of the State to warrant the conclusion that the award made by the commissioners was inadequate. Upon the question of the failure of the commissioners to apportion the awards between the city and the State for the easements taken on Ward's Island, the court held that under section 3378 of the Code of Civil Procedure an application may be made for a reference to ascertain the amounts due the city and the State. From the order reversing the order denying plaintiff's motion to confirm the report of the commissioners an appeal was taken to the Court of Appeals, and in my notice of appeal I included a notice of intention to bring up for review the interlocutory judgment which determined that the gas company had the right to acquire the easements and rights of way and that such easements and rights of way were necessary for the purposes set forth in the petition.

In connection with this subject I desire to call your attention to what I regard a very grave defect in the law of condemnation proceedings. These proceedings are regulated by sections 3357 to 3384 of the Code of Civil Procedure. "Where judgment is entered in favor of the plaintiff no appeal directly from that judgment is anywhere given to the defendant." It is an interlocutory judgment which does not end the proceeding. It determines that the plaintiff is entitled to take the property upon making compensation therefor and the court is directed upon the entry of such a judgment to appoint commissioners to ascertain the amount to be so paid, and it is only after the ascertainment of such compensation and payment therefor that such judgment can be enforced. After the order confirming the report of the commissioners to ascertain the compensation to be paid has been made, defendant may appeal and by the appeal then taken he may review not only the proceedings of the commissioners, but also the judgment and all proceedings antecedent thereto. (*Village of St. Johnsville v. Smith*, 61 A. D., 380; section 3375 of the Code of Civil Procedure.)

Whether or not sufficient authority exists for the condemnation of land ought to be definitely and decisively determined before the question of what compensation should be paid for its acquisition is considered. In this case the right to appeal from the interlocutory judgment does not seem to be given by the Code unless the final order fixing the compensation is made at Special Term (see section 3375 of the Code). It was not until the Appellate Division reversed the order of the Special Term denying the motion to confirm the report and confirming the report of the commissioners was made that there existed a final order fixing the amount of the compensation for the land and easements acquired by the gas company. A corporation seeking to acquire State property may, as was done in this case, obtain an interlocutory judgment entitling it to the possession of it, leaving the only question to be considered the amount it should pay. It may, as was done here, preclude a denial of the State's right to appeal from the judgment sustaining its authority to acquire it by a refusal of the court at Special Term to grant its own motion to confirm the awards made by the commissioners for the taking

of the property. Such a condition, it seems to me, works an injustice to the one whose land is taken, whether the land belongs to the State or to an individual, and I respectfully suggest that the law ought to be amended so as to provide directly for an appeal by the defendant from an interlocutory judgment.

People ex rel. McNeile vs. Martin H. Glynn as Comptroller of the State of New York.

This is a proceeding to compel the Comptroller to reinstate the relator in his position as transfer tax appraiser for the county of Kings from which he was removed by the Comptroller on January 5th, 1907, the relator contending that as a member in good standing of Hook & Ladder Company No. 4 of Richmond, he was protected from summary removal pursuant to the provisions of section 21 of the Civil Service Law. I tried the case before Judge Abbott on December 20th, and in obedience to the Judge's direction filed a brief in behalf of the Comptroller. The matter has not yet been decided.

People ex rel. Abel vs. Milliken and Others, Comprising the State Civil Service Commission.

This is an application for a writ of certiorari directed to the State Civil Service Commissioners requiring them to return by what authority they removed the relator from his position of clerk in the office of the County Clerk of Kings county. I appeared upon the return day, December 23rd, and contended that under subdivision 2 of section 983 of the Code of Civil Procedure the application should be made in Albany county, and I also contended that mandamus and not certiorari was the proper remedy, submitting a brief upon both of these points. The court subsequently denied relator's application.

In re William Trist Bailey, Bankrupt.

This was an application made in the United States District Court of the Eastern District by the trustee in bankruptcy for an injunction restraining the State Engineer and Surveyor from selling certain lands owned by the State of New York on Long Island, known as Sloop Bar Hassock. Bankrupt alleged that the

lands belonged to him. On July 29th I appeared before Judge Chatfield and argued for the denial of the injunction and also moved to vacate the stay granted by the order to show cause, contending that in a summary proceeding the court could not decide a disputed question of title, and also objected to the court's jurisdiction to make an order restraining a State officer. I prepared and submitted a brief, and on October 29th Judge Chatfield wrote an opinion denying the application for the injunction and vacating the stay.

**In re Application of Pennsylvania Railroad Company to
Acquire by Eminent Domain Several Parcels of Land in
the Borough of Queens for a Terminal and Yard.**

In this proceeding the State claims to be the owner of damage parcel No. 16 and the Commissioners of Estimate and Appraisal have made an award for said damage parcel of \$5,730 subject to the alleged dower interest of Christine Zons and a mortgage of \$825 held by Maria Wahlers. The report of the commissioners has been confirmed and an order entered directing the plaintiff to deposit the amount of the award in the Hamilton Trust Company of Brooklyn, or to pay said award to the People of the State of New York, Christine Zons and Maria Wahlers or to their respective attorneys. In an application made to Mr. Justice Clark for the payment of the award to the State of New York, free and clear of any lien or encumbrance, his Honor decided that pursuant to the provisions of section 3378 of the Code he would appoint a referee to pass upon the claim made by the State, by Christine Zons and by Maria Wahlers to the award. An order in accordance with this direction has been submitted to the Judge for signature.

**People ex rel. Isaac N. Stillwell vs. John H. Gunner and
Others, Comprising the Board of Port Wardens of the
Port of New York.**

This is a proceeding to review by writ of certiorari the action of the Board of Port Wardens of the Port of New York in adopting and attempting to enforce certain amendments to their rules,

orders and regulations governing Hell Gate pilots. The proceeding was begun by the service of an order to show cause dated April 1st, 1906. The writ was issued and served on June 5th, 1906. The return to the writ was filed on February 18th, 1907. The hearing upon the writ and the return will be had at the Appellate Division in this department on the first Monday of January, 1908. The relator, a Hell Gate pilot, asks the court to hold that the rules and regulations adopted by the Board of Port Wardens are illegal in that they constitute an attempt on the part of the Port Wardens to change the system of pilotage and to limit the pilotage to one boat; that said rules, as amended, are also illegal in that they establish a new kind of station boat which is not authorized by the laws of the State. The relator also raises the question of the right of the Board of Port Wardens to punish pilots offending against said rules by fine or suspension, or both.

**People of the State of New York vs. Patrick Keenan as
Chamberlain of the City of New York.**

On April 23rd, 1907, a peremptory writ of mandamus was obtained from Mr. Justice David Leventritt directed to Patrick Keenan as Chamberlain of the City of New York, returnable on the 20th day of May, 1907, requiring the said Patrick Keenan or his successor in office to pay over and transfer to the Treasurer of the State of New York "all sums of money heretofore paid into court in the counties of New York, Kings, Queens and Richmond now on deposit and which have remained unclaimed in the hands of the said Chamberlain and of the County Treasurers of the county of Kings and Richmond for the period of twenty years or more, together with all the accumulations of interest thereon, after deducting his legal fees as Chamberlain, pursuant to the provisions of section 9, chapter 651 of the Laws of 1892," and also to furnish the State Comptroller and the State Treasurer each a certificate under the Chamberlain's hand and official seal showing the details regarding said moneys.

Subsequent to the issuance of the writ Patrick Keenan became ill, and before said writ could be served, died. A motion was thereupon made before the Supreme Court of New York County to amend the writ by changing the return date from

May 20th to a day not less than twenty days from the signing of the order on said motion. This motion was granted and thereupon an amended writ addressed to James J. Martin as Chamberlain of the City of New York and returnable on the 17th day of January, 1908, was obtained from the Hon. Mr. Justice Leventritt on the 27th day of December, 1907, and on the same date served upon Hon. James J. Martin, as Chamberlain of the City of New York.

Investigation of Disaster on Harlem Division of New York Central Railroad at Woodlawn.

Pursuant to your instructions, I attended the hearings before the State Railroad Commission on February 26th, 27th, 28th and on March 4th, 6th, 12th, 15th and 26th, 1907. The investigation clearly demonstrated that the cause of the accident, which resulted in the loss of about twenty-one lives and the injury of two or three scores of passengers, was due to excessive speeding around the curve of the company's tracks at Woodlawn. A trial in this county of an indictment against Mr. Smith, the General Manager of the Railroad Company, resulted in a direction by the court of a verdict in favor of the defendant. The investigation also showed the perfect unanimity with which the various directors examined disclaimed responsibility for mismanagement in the various departments of the railroad; and in connection with this subject I suggested to the Railroad Commissioners that efficiency in management might be increased and greater facility in placing responsibility for neglect attained by amending the Railroad Law so as to provide that the heads of the various departments be made members of the Board of Directors of the company. If this were accomplished I believe the governing body of the railroad company would be afforded a more intimate knowledge than their examination before the Commissioners disclosed they appear to have possessed of the work being done in each of the several departments; and if they could be shown to have such information, the readiness with which they have been enabled to disclaim responsibility, it seems to me, would be greatly diminished.

People vs. Equitable Life Assurance Society.

I beg leave to refer to my letter to you of July 11th, 1907, in which I reported the result of several interviews between Messrs. Thomas Spratt and J. Edward Swanstrom, representing a committee of three appointed by the policyholders of the Equitable Life Assurance Society to examine certain transactions of the directors of the said society.

During the past year a number of Surrogate Court matters in this county and in Kings have been attended to by me, and as to those I have made full reports from time to time to Deputy Attorney-General Leggett.

Mr. Edelson has submitted a report of the prosecutions and settlements by him of violations of the Agricultural Law.

Yours very respectfully,

JAMES A. DONNELLY,
Deputy Attorney-General.

OPINIONS OF THE ATTORNEY GENERAL.

DECISIONS OF THE ATTORNEY-GENERAL IN APPLICATIONS TO COMMENCE ACTIONS IN THE NAME OF THE PEOPLE; ALSO SUCH OFFICIAL OPINIONS RENDERED BY THE ATTORNEY-GENERAL AS ARE DEEMED TO BE OF GENERAL PUBLIC INTEREST AND OPINIONS RENDERED IN MATTERS BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

OPINIONS OF THE ATTORNEY GENERAL.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *February 6th*, 1907.

BEFORE THE ATTORNEY-GENERAL OF THE STATE OF NEW YORK.

In the Matter of the Application of
JOHN H. DIESTER to HON. WILLIAM
SCHUYLER JACKSON, Attorney-Gen-
eral of the State of New York, for
leave to institute an action in the
nature of a quo warranto against
THOMAS J. WINTERMUTE.

Appearances: Michael Danaher, Esq., for petitioner; Richard H. Thurston, Esq., for Thomas J. Wintermute.

At the election held on November 6th, 1906, the voting in the city of Elmira took place by the use of voting machines. It appears that, on account of the improper adjustment by the city authorities of the endorsing bars attached to the machines, the mechanism of the machines was disarranged.

Subsequent to the election, an investigation was conducted pursuant to an order of the Supreme Court, in the course of which each machine used in the twenty-eight districts of that city was examined and voted on experimentally. It was demonstrated that because of the improper adjustment referred to an accurate result of the voting was not recorded. The experiment indicated a loss to the candidate of the Democratic party for the office of county treasurer in each election district and a loss to the candidate of the Republican party in only one district.

Affidavits are produced by the petitioner showing that more persons voted for the Democratic candidate for county treasurer

in the First Election district of the Fourth ward than there were votes recorded for that candidate in that district. In the same district, out of a total of 273 voters, the official returns report only 27 votes for the Democratic candidate for the office in question, while the usual party vote was about 100. According to the official returns, Mr. Wintermute, the incumbent, was elected by a plurality in the county of only two votes.

It is conceded on this application that the machines were improperly prepared for use on election day and that the effect of the improper adjustment discredits the accuracy of the result of the election, as shown by the counters upon the machine, and upon which the returns were based.

Leave to bring an action in the nature of *quo warranto* to try the incumbent's title to the office of county treasurer will be given to the petitioner upon his complying with the usual rules and giving an undertaking, in the amount of \$500, to protect the State against costs.

WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,

ALBANY, N. Y., April 6, 1907.

BEFORE THE ATTORNEY-GENERAL OF THE STATE
OF NEW YORK.

In the Matter of the Application of
EDWARD E. DELANCEY and JOSEPH
E. DELANCEY for leave to bring an
action under Section 1757 of the
Code of Civil Procedure.

Appearances: Edward W. Norris, Esq. and William L. Snyder, Esq., for the applicants; Herbert E. Lent, Esq., and Henry W. Smith, Esq., in opposition.

This is an application for leave to bring an action pursuant to section 1757 of the Code of Civil Procedure to vacate, annul and set aside certain letters-patent, bearing date the 28th day of September, 1904, and recorded in the office of the Secretary of State, at Albany, in Liber 54 of Patents, conveying to Bellew & Merritt Company, a corporation, certain lands under water in Mamaroneck harbor in the county of Westchester.

On May 5, 1903, the Bellew & Merritt Company filed with the Land Board an application for a grant of 18,583 acres of land under water, for its beneficial enjoyment, for the purpose of filling in the same and to drive piling and construct bulkheads of wood or stone as retaining walls, and to erect upon the said lands when so filled, buildings and other structures, to be occupied as dwellings and for business purposes.

Remonstrances were filed by Edward T. DeLancey and the Village of Mamaroneck. Mr. DeLancey claimed the ownership not only of the uplands constituting Hog Island, in Mamaroneck harbor, but also of the lands under water which were applied for.

The Village of Mamaroneck asserted that the grant applied for would interfere with navigation and the commercial interests of said village.

Hearings were had on June 24th, September 23d, October 8th and November 5th, 1903. A great many witnesses were sworn and voluminous documentary evidence was received.

The then Attorney-General certified that the application was made in accordance with the provisions of the statute relating thereto and with the rules and regulations of the Commissioners of the Land Office.

On April 28, 1904, the Standing Committee of the Land Board reported on the application for the above grant, in the following language:

“ Your committee, after mature deliberation, are of the opinion that your honorable board has the full legal right to grant letters-patent to the applicants, upon the ground that the preponderance of evidence tends to show that the applicant is the owner of the upland and is therefore entitled under the statute to the lands under water applied for, in accordance with the modified map and description.”

The State Engineer and Surveyor reported that he "is of the opinion that the making of the grant in accordance with the amended map and amended description, will not interfere with navigation."

The Comptroller reported thereon as follows: "That said land, containing 16 and 337-1000 acres (as per the modified map and description), is appraised by James B. Padden at \$150 per acre, or \$2,450.55; and that his report and his receipted bill for \$8.50 for expenses incurred in making the appraisal, are enclosed herewith. In my judgment, \$30, in addition to the above reported costs, should be charged for appraising said land."

Upon the foregoing proceedings the letters-patent were granted.

The petitioners now seek to have the Attorney-General institute an action to have the letters-patent set aside and vacated upon the ground that they were obtained by means of a fraudulent suggestion or concealment of material facts, and through mistake.

The allegations with regard to the concealment of material facts are to the effect that the applicant procured sworn testimony upon which it sought to have the late Attorney-General act in fixing the price of land at \$400, when, as is alleged by the petitioners, the land was worth, including the upland in Hog Island, from \$50,000 to \$75,000.

The petitioners further allege that "there were mortgages on the property aggregating \$35,000, which fact was never disclosed upon the hearing, and one mortgage for \$25,000 is recited in a deed which was put in evidence as a deed from one grantor to another." It is alleged that "there was a mistake in regard to the ownership of the lands, because, upon the chain of title the remonstrant proved before the Attorney-General that the remonstrant had title to the lands in Mamaroneck harbor, between high and low water mark, and that the State, therefore, could not grant that to which it had no title."

The petitioners claim that the State was not the owner of the land included in the patent, but that their ancestor, Edward T. DeLancey, was then the owner thereof.

It is argued by the remonstrants that there is now pending in the Supreme Court an action of ejectment brought by DeLancey against the Bellew & Merritt Company and the mortgagees, and

further, that the Village of Mamaroneck, in or about the month of October, 1905, commenced a proceeding to condemn the lands under water included in the letters-patent, with other lands, for public purposes, that the petitioners were made parties to the proceedings, and that the question of title to this property would be litigated in such action and proceedings now pending. While the position of the court in those proceedings should not be anticipated, yet if it should be held that this patent could not be attacked collaterally, but must be tested directly, under the decision of the *N. Y. C. & H. R. R. Co. v. Aldridge*, 135 N. Y. 83, the petitioners claim they would be without remedy if this application should be denied.

The petitioners are entitled to an opportunity to have their rights judicially determined. Therefore, I feel justified in allowing the petitioners to commence an action in the name of the People, upon the filing of a bond, properly executed, in the sum of five hundred dollars, to indemnify and save harmless the People from all damages, costs and expenses by reason of the said action so to be commenced.

W. S. JACKSON,
Attorney-General.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *May 23, 1907.*

BEFORE THE ATTORNEY-GENERAL OF THE STATE
OF NEW YORK.

In the Matter of the Application of
WATSON E. ROBERTS, praying that
an action be brought to determine
the title to the office of Recorder
of the City of Binghamton.

Application for leave to bring an action in the nature of quo warranto by Watson E. Roberts as proposed relator.

F. F. Williams, Esq., for petitioner.

Albert Hotchkiss appears in opposition as respondent.

R. B. Richards, Esq., for respondent.

From the facts admitted by the parties, the following appears:

The petitioner is Watson E. Roberts, a resident of the city of Binghamton, who, on January 14, 1902, was appointed by the common council of that city to the office of recorder for a term of four years to commence on the first day of January, 1903, and terminate on December 31, 1906. The petitioner thereafter qualified and took office upon the commencement of his term. By chapter 381 of the Laws of 1902, taking effect April 7, 1902, the charter of the city of Binghamton was amended so as to provide as follows:

“The recorder last heretofore appointed shall continue in office until the expiration of his term and until his successor shall be chosen and qualified. At the election in November, 1907, and every four years thereafter, a recorder shall be chosen for a term of four years beginning with the first day of January next following. All officers elected at any election held as hereinbefore provided, shall, unless otherwise provided by this act, enter upon the performance of their duties upon the first day of January succeeding their election and they shall hold for the term in this section provided and until their successors have taken the oath of office and become duly qualified to serve.”

On January 14, 1907, the common council of the city of Binghamton passed a resolution purporting to appoint the respondent, Albert Hotchkiss, to the office of recorder of said city and reciting the existence of a vacancy in said office. Mr. Hotchkiss subsequently took an oath of office and gave a bond, and on January 23, 1907, secured entrance into the room where the court of the recorder is held in said city and began to exercise those duties. The petitioner, since January 23, 1907, has been prevented from occupying the court room and the various branches of the municipal government of the city refused thereafter

to recognize the petitioner as recorder under what appears to have been a prearrangement.

No question is made but that the appointment of Mr. Roberts on January 13, 1902, and his qualification and entry into office thereunder then constituted him the lawful incumbent of the office and that on January 23, 1907, he was at least the *de facto* recorder.

Respondent claims that petitioner's right to remain in after December 31, 1906, ceased by reason of the statutory changes and the appointment by the common council made since his appointment.

On the other hand, the petitioner claims that the acts of the common council in appointing a recorder on January 13, 1907, was without warrant of law, even though his own term could not be extended by virtue of an act of the Legislature, and that he would hold on by virtue of his original appointment until the qualification of a successor legally chosen.

It is not necessary in disposing of this application to consider and reach a conclusion as to the validity of either contention. A serious entanglement of legislation surrounds the question of who is now entitled to the office.

The dignified administration of justice cannot be realized if judges are to be seated or unseated by agreement between the various departments of a city government to recognize or to refuse to recognize one claimant as against another. Public interest in this case requires that this question be determined in the manner provided by law through an action in the nature of *quo warranto*.

The petitioner is therefore given leave to commence an action as relator in the name of the People, he having given the undertaking required in such case.

W. S. JACKSON,
Attorney-General.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 1, 1907.

BEFORE THE ATTORNEY-GENERAL OF THE STATE
OF NEW YORK.

In the Matter of the Application of
R. G. H. SPEED et al. to commence
an action in the name of the People
to obtain judgment that EDWIN R.
CURTIS et al. are acting as a corpo-
ration under the name of AMERICAN
UNDERWRITERS' FIRE INSURANCE
COMPANY OF MONROE COUNTY,
without being incorporated, etc.

An opportunity was extended on March 20, 1907, to the respondents to take steps to amend the defects in their certificate of incorporation. Amendatory papers have since been filed by the respondents with the Secretary of State under section 7 of the General Corporations Law, but objection to the sufficiency thereof has been made. That statute is so broad in its terms that an action turning on the insufficiency of these amendatory papers would probably not be successful.

I am of the opinion, therefore, that leave to bring the action should not be given under the circumstances.

Application denied.

W. S. JACKSON,
Attorney-General.

STATE OF NEW YORK:

ADJUTANT-GENERAL'S OFFICE,

ALBANY, *October 8, 1907.*BEFORE THE ATTORNEY-GENERAL OF THE STATE
OF NEW YORK.

In the Matter of the Application of
FRED W. COOK for leave to bring
action in the name of the People to
restrain R. G. H. SPEED et al. from
acting as a corporation under the
name of "TOMPKINS COUNTY CO-
OPERATIVE FIRE INSURANCE COM-
PANY."

Horton & Brown, for petitioners; George B. Davis, for respondents, with George F. Slocum as counsel.

This application is made upon the grounds that respondents are acting as a corporation and that they are exercising rights, privileges and franchises not granted by law. Action is requested to be brought under subdivision 3 of section 1948 of the Code of Civil Procedure.

Applicant is engaged in soliciting fire insurance in the city of Rochester and complains in his own behalf. He contends that the document on which respondents rely, filed with the Secretary of State on April 7, 1887, did not constitute an incorporation and satisfy the requirements of sections one or three of chapter 573, Laws of 1886, in that it did not contain, or that there was not filed therewith, a copy of the "articles" referred to in section 3. The latter section does not use the term "certificate of incorporation" or expressly require a copy of the "certificate of intention to form a corporation" to be filed in the office of the Secretary of State nor elsewhere.

If such had been the intention, the term "certificate," as used in section 1, would naturally have been used to express that pur-

pose. An incorporation must be effected and directors elected before steps under section 3 can be taken. If the term "articles" there meant the certificate of intention, then the section required a redundancy of matter to be incorporated in the "statement" therein required to be filed before business could be undertaken.

Section 19 of the act referred to provided that a copy of the papers "filed in the office of the Secretary of State" should be filed with the clerks of counties adjoining the county in which business was begun.

The statute as a whole is so devoid of requirements which might be expected in one authorizing the business of insurance, that it is unwarrantable to imply a legislative intent that the formation of corporations under it was to be attended with the requirements usual in similar cases. It is no more surprising to find that incorporators of such a company might comply with the requirements of this statute, though omitting to file articles of incorporation or their "certificate of intention" in any public office, or copies thereof, than to find that the security of the funds which such an insurance company might hold was to be left to such safeguards as the incorporators themselves might see fit to take.

Whatever may be said in the light of recent experience as to the wisdom of such statutes, the provisions of this one, enacted over twenty years ago, compel the conclusion that the Legislature intended to authorize co-operative insurance to be carried on after the most meager formalities had been observed by incorporators.

On the hearing the respondents produced an original certificate of intention to incorporate the "Tompkins County Co-operative Fire Insurance Company," which purported to be made under the provisions of the statute referred to and was subscribed by forty-one persons, residents of Tompkins county, and acknowledged by thirty-one of them, wherein they declared that they collectively owned property of not less than \$50,000 in value and which they desired to have insured. While three or four of the acknowledgments were defective because taken before one of the incorporators, the acknowledgments of at least twenty-seven of the subscribers were regular. The certificate affirmatively showed that those twenty-seven signers owned collectively \$69,500 in property. That certificate has ever since remained in

the custody of the company's officers, who produced it. Had a copy thereof been attached to the "statement" (see section 3) at the time of filing the latter with the Secretary of State, no question could arise as to the regularity of the incorporation of the company. But, to hold that the filing of a copy of the "certificate of intention" was a prerequisite to the incorporation of the company is unwarranted by the terms of this statute. If, however, it were necessary here to hold otherwise, the failure to file a copy of the "certificate of intention" which had been actually made, constituted only an irregularity, curable under section 7 of the General Corporations Law *nunc pro tunc*.

It is recommended here, to the present officers, that the original certificate should now be deposited with the Secretary of State to avoid future applications like the present, disturbing to its large number of policyholders.

Applicant contends, also, that the extension of the business of the company into the counties of Monroe and Wayne was illegal, for the reason that a copy of the certificate of intention was **not** filed in the clerk's office of those counties respectively. This company had a right to extend its business under the terms of section 19 of chapter 573 of the Laws of 1886, which right was reserved to it by section 260 of the Insurance Law. But section 278 of the Insurance Law must be construed to require the filing in such counties of copies of the papers only required to be filed with the Secretary of State. Those, as above shown, did not include a copy of the "certificate of intention."

The objection that the certificates of acknowledgment attached to the statement required by section 3 and to the certificate required by section 19 of the act in question were defective because taken before some of the subscribers is without force, for the reason that neither of those sections required that the signers should acknowledge execution thereof.

The application and policy forms used by this company clearly and conspicuously set forth the liability of its members to assessments, so that no policyholder can with good excuse claim that deception on that score has been practiced on him. The representation of an agent that members are not subject to assessments, which was shown by applicant to have occurred, was explained by the affidavits of the principal officers and of the offending

agent himself to have been made without authority of the management.

The grounds for invoking the powers of the Attorney-General in this case, if they had not been met, would consist only of irregularities attendant upon ostensible attempts to comply with these statutory requirements.

Since the action of this department in former cases may have prompted this application and since former action is cited for its support, it may as well be said here that irregularities alone in the organization of these co-operative companies will not always be deemed sufficient to justify action. In a case where question of strict compliance with such requirements is in doubt, this department would not strain its powers against any companies organized under this or similar statutes, where they appear to be conducting business honestly and to be entitled to the confidence of their members and to be fairly exercising the privileges and powers conferred by law.

On the other hand, this department has seized and will continue to seize upon mere irregularities in formation of co-operative companies to reach those organized or conducted apparently for the sole benefit of the officers, and who, as the result of bad or dishonest methods, leave the policyholders to face an accumulation of losses. This is not a company like others which have come to the notice of this department, where the privilege of managing and absorbing co-operative insurance funds has been made the subject of bargain and sale between successive boards of directors. The company under consideration here was shown to have upward of 25,000 policies in force, covering insurance in the sum of \$23,000,000, with upward of \$90,000 cash on hand, and to have paid its losses promptly. Many of the original officers are still active in the management of the company.

If the case made here required character to be considered, then this company would merit favor. Good character is an asset everywhere and is especially proper to be considered by a prosecuting officer entitled to exercise discretion in the use of his powers.

This application to bring action should be and is denied.

W. S. JACKSON,

Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *November 14, 1907.*BEFORE THE ATTORNEY-GENERAL OF THE STATE
OF NEW YORK.

In the Matter of the Application of
SPEED et al. for leave to commence
an action against GRIDLEY et al., to
restrain them from doing business
under the name of the NORTHWEST-
ERN MUTUAL FIRE INSURANCE COM-
PANY of Onondaga County, etc.

This application is made under section 1785 and 1948 of the Code of Civil Procedure. The grounds are:

First: That respondents are acting as a corporation without being duly incorporated, or are exercising corporate rights, privileges and franchises not granted to them by law;

Second: That, if a corporation, it has remained insolvent for at least one year; has neglected to pay and discharge its notes or other evidences of debt, including judgments rendered against it, and being an insurance corporation, has become insolvent or unable to pay its debts, or has violated the provisions of the act under which it was incorporated.

Appearances: George F. Slocum, Esq., for petitioners; Hopkins & Howlett, Esqs., for respondents.

A formal answer in denial of the charges was presented. A hearing has been had and affidavits and exhibits received from the parties, and briefs were submitted.

Respondents' affidavits showed that property in the amount of \$55,500 was possessed by the original subscribers to the certificate of intention to form a corporation at the time of the making thereof, but the certificate did not affirmatively so state.

It is charged that before commencing the transaction of business the company did not enter into preliminary agreements for

the insuring of property in an amount not less than \$100,000, as required by the Insurance Law, section 264. Respondents submit the affidavit of A. D. Grant, who since January 17, 1907, has acted as secretary of the company, but who was not before connected therewith, to the effect that before the commencement of the transaction of business such preliminary contracts were entered into, as appears from the books and records of the company and, as he claims, can be shown in any proceeding where former officers can be sworn and examined. No written contracts, however, have been produced, nor any books or records which show that any preliminary contracts in writing were ever entered into or which indicate that any express contracts of that nature were ever exacted before the first policies in that amount were issued.

It is charged that the company is insolvent or unable to pay its debts, and that it has been, moreover, in that condition for more than one year. It is answered that a co-operative assessment fire insurance company is not insolvent by reason of unsatisfied obligations, whatever the amount, since debts are to be met by the levying of assessments upon members. No positive denial is made of the charge that the company has failed for at least one year to pay certain matured debts.

If this company were of a class subject to official supervision, the Attorney-General might, as to these points, indulge in constructions and presumptions favorable to respondents. There being no supervision, such a treatment of this case could not be justified in view of facts developed upon the hearing concerning the history of this company and facts revealed by its own records on file with the Secretary of State and of the informal complaints against it reaching the State departments.

The organization of this company could only have been effected under article 9 of the Insurance Law. That article authorized the formation of co-operative companies by residents of a town or county, to provide neighborhood members naturally having some personal acquaintance, with fire insurance resting on their mutual contracts to pay assessments to meet losses. The business of this company was commenced in August, 1903. According to its last report, filed to cover the year 1906, the company had

1233 outstanding policies, covering risks to the amount of \$1,165,380.50, with a net outstanding debt of \$2,172.63. That indebtedness has since increased until, on July 2 last, its amount was, in round figures, \$8,000, when the company's first assessment and in the amount of \$10,000 was levied on members. Two thousand dollars of that sum was intended to cover losses which might subsequently accrue. Up to November 1, 1907, \$2,988.00 has been received upon the assessment according to the secretary's statement. The business has been extended territorially to six counties and is procured by means of some twenty soliciting agents who are compensated by commissions. It is safe to believe that few policyholders know any other policyholders, or that any of them applied unsolicited for insurance in this company. During its brief existence the management of the company has changed hands three times. Since beginning business, as appears from sworn reports, the company has received in gross for premiums \$45,652.45. Up to January 1, 1907, it had paid out for fire losses \$15,379.41 and disbursed for expenses \$17,222.85. Its last report showed that on December 21, 1906, there was an outstanding gross indebtedness of \$5,280.24.

The foregoing in itself is not necessarily violative of any statute. The important question is, however, whether the company is in a position to provide for payment of its losses by an assessment legally enforceable, and whether, in seeking new business, it can honestly offer new members that security which is absolutely dependent upon the liability of every old policyholder to pay future assessments. To determine that question the following matters must be reckoned with: The organizers were twenty-four persons resident in Syracuse, although but a small amount of insurance was sought for in that city. The president making the first annual report is a man known to this department as promoter of several companies organized under this statute, and which have been the subject of complaints before this department. The by-laws of this company provided for a corps of soliciting agents and for an advanced cash premium and policy fees. The only possible reference to assessments, and that so indirect as not to be apparent to applicants, is contained in the following clause of the by-laws as printed upon the reverse side of the policy form used:

"Article 12, section 1. All persons or corporations who shall become insured by this company shall be members thereof during the time of the acceptance of their policy or policies, or any renewals thereof, and no longer, whether an undertaking be signed by them or not."

The by-laws filed with the Secretary of State on the commencement of business, since modified as above, contained no article suggesting that any member is subject to assessment for losses. The company has used the form of policy in imitation of the standard form of policy in use in this State. The company named omits the term "co-operative." The policy form begins with the name "Northwestern Mutual Fire Insurance Company," below which, in very small type not likely to be observed, appears the words "of Onondaga county." In bold type appears the statement "INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK, 1892." Whatever impression was intended thereby, the company was not, in fact, incorporated until 1903. The policy form recites that it is issued in consideration of the stipulations therein named and of dollars premium. There is no stipulation upon the face of the policy which suggests that the insured is to be liable for any assessments. The first policy issued by this company, instead of being numbered one, bore the number 99,975, when no earlier policies, in fact, had been issued. Prior to the making of the application to bring suit herein, no written application for membership or agreement to pay assessments was required to be subscribed by the policyholder as a condition of membership. The only application blank issued was one to be filled in and forwarded by the soliciting agent as a business report and contained no suggestion that the applicant should be liable for assessment or that notice of that fact had been given him, nor did its form provide for any subscription thereof by the applicant.

Since this application to bring suit was made, and since notice of the assessment made by the company reached its policyholders, various State departments have been appealed to for assistance or protection by the policyholders of this company. The writers disclaimed knowledge that in taking a policy they were becoming members of an assessment company.

In view of the above facts it seemed proper to call upon the management to produce any evidence they might have that their policyholders are in fact obligated for the payment of assessments. While the information was called for, not a single contract or undertaking in writing of policyholders to pay assessments was produced. Presumably, such evidence does not exist. It is claimed, however, that liability would follow from acceptance of policies which are to be read in connection with the by-laws.

The Insurance Law, section 267, provides:

“Every person (to be) insured — shall give his undertaking — to pay his pro rata share to the corporation of all losses or damages sustained by any member thereof from any cause specified in the policy, which undertaking shall be filed with the secretary in the office of the corporation.”

That statute requires that the agreement to pay assessments shall not only be express but shall be in writing, because it is to be filed in the office of the corporation. Assuming, however, that the implied agreement to pay assessments would suffice, its making could only be established by showing that at the time of the acceptance of the policy the insured knew that he was applying for membership in an assessment company. That proof could not be made by reference to provisions in the policy or by-laws of the company which fell short of constituting notice of that fact. The by-law provision, that applicants should become members on acceptance of their policies, whether they subscribed an undertaking to pay assessments, or not, was futile in the face of the statute which provided otherwise. The only considerations to support the liability of a new policyholder to pay assessments which companies of this class have power to receive, were similar promises required by law to be exacted from all persons who had joined earlier. The payment of the so-called cash premium or policy fee by a new member might constitute a proper consideration to support the liability of the company to pay him in case of loss, if in funds, but it could not serve as a consideration to render the new policyholder liable to pay assessments for the benefit of others. The new member is only rendered liable by entering into the agreement required by the statute as the condition of his full

membership. If, as appears in this case, no such agreement was exacted from any policyholder, no assessment can be enforced against any of them. The form of policy used, reciting a flat rate, called a premium, would lead an applicant to believe that he was making a full payment in advance for the insurance he was to get. The advanced flat cash premium charged, and usually much less than that charged by stock companies, and the leverage for securing new business was calculated to dispel suspicion that the company was organized on the assessment plan. Any policyholder who denies that he ever agreed to pay assessments would present a strong case by standing on the policy and by-laws alone. If no policyholder is liable to pay assessments, then the company is unable to provide for payment of its debts and is insolvent. The sooner these policyholders and the insuring public know the truth about this matter, the better. That question can be presented and tried out in an action brought upon this application. The cause of justice will be better served in that way than to have many separate suits invited by attempts on the part of the company to enforce the assessment against the large number of policyholders who have not yet made payment.

The usual plea is made that a new management, desirous of collecting the present assessment and discharging the existing obligations, has taken hold of the company. Nothing, however, can stop the accumulation of new losses while the business is continued, and many present policyholders have been renewing their insurance in this company since this application was made.

The application for leave to commence an action should be and is granted on the usual conditions.

W. S. JACKSON,
Attorney-General.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,

ALBANY, November 20, 1907.

BEFORE THE ATTORNEY-GENERAL OF THE STATE
OF NEW YORK.

In the Matter of the Application of
DANIEL S. PETERS for the removal
of the Directors of the MONARCH
COATED PAPER COMPANY, a foreign
corporation.

This is an application to the Attorney-General to commence an action in the name of the People of the State of New York to remove the directors of the Monarch Coated Paper Company, *a foreign corporation*, pursuant to the provisions of sections 1781 and 1782 of the Code of Civil Procedure.

William E. Kisselburgh, Jr., Esq., for the application. William Hepburn Russell, Esq., in opposition.

Entirely aside from the jurisdictional question raised herein the issues presented by the moving papers and the argument resolve themselves into the inquiry of whether or not the Attorney-General has good reason to believe that the action sought to be brought could be maintained, and whether or not the public interests require him to bring it.

It appearing that the applicant has a sufficient remedy in a private action for his alleged grievances, and it not appearing that the proposed cause of action could be maintained or that the public interests in any way require the Attorney-General to bring it, the application is respectfully denied.

WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK:

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 12, 1907.*BEFORE THE ATTORNEY-GENERAL OF THE STATE
OF NEW YORK.

In the Matter of the Application of
WILLIAM L. UTLEY for the com-
mencement of an action against
JOHN N. BRIGGS and STEPHEN W.
MOSHER, ETC.

Appearances: Charles Irving Oliver, Esq. and J. N. Sheehan, Esq., for petitioners; Gaylord Logan, Esq. and William F. Rathbone, Esq., for respondents.

This is an application to the Attorney-General to institute an action under subdivision 3 of section 1948 of the Code of Civil Procedure, which reads as follows:

“Section 1948. The attorney-general may maintain action.

— The attorney-general may maintain an action, upon his own information, or upon the complaint of a private person, in either of the following cases:

“3. Against one or more persons who act as a corporation, within the State, without being duly incorporated; or exercise, within the State, any corporate rights, privileges or franchises not granted to them by the law of the State.”

The facts disclosed by the papers submitted and as developed at the hearing are not in dispute except on minor points.

Prior to April, 1907, the Upper Hudson Electric Company had a contract for lighting the lighting districts of Ravena and Coeymans in the town of Coeymans, Albany county, N. Y. This company has its plant and principal office at Coxsackie, Greene county, some miles from these lighting districts, and performed its contracts therein by running wires to Ravena and Coeymans from its Coxsackie plant.

The service so furnished by the Upper Hudson Electric Company being deemed unsatisfactory, the respondents and others organized a corporation known as the "West Shore Electric Company," procured from the town of Coeymans a franchise, and applied to the State Commission of Gas and Electricity for permission to engage in the lighting business in that town. This application was contested by the Upper Hudson Company and resulted in its being refused by the Commission under date of April 25, 1907, but at the same time the Commission criticized the service rendered by the Upper Hudson Company in this district and made certain orders looking to the betterment of such service.

Upon this refusal the respondents discovered a corporation known as the "Atlantic Light & Power Co.," which had been incorporated by articles filed with the Secretary of State on May 12, 1905, but had lain dormant and never transacted any business since the date of its alleged incorporation. As the statute (chapter 737, Laws of 1905), which created the Commission of Gas and Electricity, did not go into effect until June 3, 1905, and as that statute gives such commission the power to grant certificates of authority only to corporations "hereafter" formed, the Atlantic Light & Power Company, if duly incorporated or existing, would be outside the jurisdiction of the commission. The respondents, therefore, acquired this corporation and applied to the town board of the town of Coeymans for a franchise for it. This franchise seems to have been duly granted on May 8, 1907, and pursuant thereto, and on the same or following day, the Atlantic Light & Power Company acquired a small direct current dynamo, erected it in an ice house in the town of Coeymans, ran some wires and installed a few lights in some of the business places and commenced furnishing electric light, and at the time of this application, is continuing to furnish light on this limited scale.

In June, 1907, this company entered into contracts for lighting the streets of the lighting districts of Ravena and Coeymans, the commencement of the performance of which has been extended to February, 1908. The company has commenced the erection of a plant in the town of Coeymans and has expended several thou-

sand dollars thereon, but this plant is not yet completed. It is conceded that the installation of lights and the commencement of business on May 8th was a mere temporary expedient to prevent the operation of section 31 of the General Corporations Law, hereafter referred to, and to be retained only until the permanent plant could be erected and put in operation.

While this application is made by a resident of the town of Coeymans, it was stated at the hearing that the Upper Hudson Electric Company was "interested" therein, and, judging from the hearing, primarily so.

The respondents are the officers of and apparently the owners of a large interest in the Atlantic Light & Power Company.

The contention of the relator is, first, that the Atlantic Light & Power Company never became a corporation or achieved a legal existence, because its purported articles of incorporation did not comply with section 60 of article VI of the Transportation Corporations Law, which provides that such certificate shall state "the names of the towns, villages, cities and counties in which the operations of the corporation are to be carried on"; that the statement in the certificate that the proposed corporation was to carry on its operations in all the counties, cities, towns and villages of the State, naming them, is not a compliance with, but an evasion of, this statute; and, second, that if this corporation had a legal inception it has ceased to exist by reason of the provision of section 31 of the General Corporations Law, which reads:

"Section 31. Forfeiture for nonuser.— If any corporation, except a railroad, turnpike, plank-road or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation, its corporate powers shall cease."

The relator contends that the provisions of this section are self-executing; that the commencement of business, as above described, on May 8th and 9th, 1907, was not the commencement of the transaction of its business within the meaning of its certificate of incorporation; that the theory of the relator being that the corporation either never existed or ceased to exist, although this is

an attack on such corporate existence, yet the corporation not being in existence, could not be joined as a party, nor a proceeding brought under either section 1785 or section 1798 of the Code, but that an action in the nature of quo warranto under section 1948, above quoted, against the individuals seeking to act as a corporation is the only available remedy.

The relator is undoubtedly right in the contention that the corporation itself cannot be joined as a party in an action brought under subdivision 3 of section 1948 (*People v. Equity Gas Light Co.*, 141 N. Y. 232), and while the cases of *People ex rel. Hearst v. Ramapo Water Co.*, 51 App. Div. 145, *People v. Milk Exchange*, 133 N. Y. 565, and *People ex rel. Haberman v. James*, 5 App. Div. 412, seem to indicate that a proceeding against the corporation itself, under section 1798, is proper for a violation of section 31 of the General Corporations Law, it will be assumed for the purposes of this application that the relator has selected the proper remedy. The question whether the language used in section 31 of the General Corporations Law, "its corporate powers shall cease," renders the statute self executing is not free from doubt. The cases relied upon by the relator (*Re Brooklyn, Winfield & Newton*, 72 N. Y. 245, 75 N. Y. 335, 81 N. Y. 69, etc.), are based upon statutes which provided that the "corporate existence and powers shall cease" and "all the powers, rights and franchises shall be deemed forfeited and terminated," and these cases are held to be "border cases and the doctrine laid down in them should not be applied to cases where the legislative intent of a self executing forfeiture is not equally plain." (*Re Brooklyn El. R. R. Co.*, 125 N. Y. 441). What effect would be given by the courts to the legislative omission of the words "existence and" from the statute here in question is, to say the least, problematical, but this doubt for the purposes of this application may be resolved in favor of the applicant.

This application, therefore, is addressed to the discretion of the Attorney-General, who must decide whether, taking the facts as alleged by the relator to be true, they constitute a cause of action against the respondents, and if so, whether the interests of the public will be subserved by bringing such action.

The first contention is that the setting forth in the certificate

of incorporation of the name of every municipality in the State as the places in which the operations of the corporation were to be carried on was not a compliance with section 60 of the Transportation Corporations Law. No question is raised as to whether the certificate, having been duly approved and filed by the Secretary of State, the inclusion therein of more than the statute fairly contemplated, was not a mere irregularity which did not render the certificate void. (*Eastern Plank-Road Co. v. Vaughn*, 14 N. Y. 546.) Prior to 1900 the statute relating to the incorporation of gas companies provided for the creation of such corporations for lighting "any city, village or town, or two or more villages or towns, not over five miles distant from each other." By chapter 575, Laws of 1900, this section was amended by providing for the creation of such corporations for lighting "cities, villages and towns," eliminating any restriction or limitation, and providing that the certificate of incorporation contain the "names of the towns, villages, cities and counties in which the operations of the corporation are to be carried on." The intention of the Legislature seems to have been to remove any restriction upon the number of places in which such business might be carried on, and my attention has not been called to any statute or authority creating any such restriction. In view of the further provisions in section 61 of the statute under consideration, requiring the consent of the local authorities to this construction of lines of either pipe or wire in the streets, no public interest seems to be prejudiced thereby. The plain reading of the statute permits a corporation organized thereunder to designate as many places as it sees fit in which it may operate, so far as its charter is concerned. I am, therefore, unable to see any force in the first contention of the petitioner.

The second contention, that the Atlantic Light & Power Co. ceased to exist by virtue of section 31 of the General Corporations Law seems to be equally unavailable. It is conceded that that corporation did in fact commence doing business three or four days before the expiration of the two-year period. Three days is as good as three months or a longer period, so far as time is concerned. The fact that the user was but a limited one does not help matters. It has been uniformly held that but slight

user need be shown to prove the existence of a de facto corporation and I know of no authority suggesting that a full and complete user of every right and privilege granted a corporation must be shown to avoid a forfeiture or expiration of its charter.

Upon the conceded facts, therefore, it seems to me that it is definitely shown that no cause of action under section 1948 of the code exists against the respondents.

I come more readily to this conclusion because the equities of the matter are with the respondents. It may well be that the interests of the inhabitants of the town of Coeymans will be better served by the establishment of a plant in that town, rather than by a service from a plant some miles distant. At any rate they will have the benefit of competition between these two corporations.

The respondents have invested or contracted to invest a sum approximating \$50,000 in the establishment of this plant, the value of which would be seriously impaired, if not destroyed, were the charter of this corporation to be annulled.

Finally the controversy is between two rival corporations, the Upper Hudson Electric Co. and the Atlantic Light & Power Co., involving purely individual and private rights, and in which public interests are in no way concerned and, therefore, no case is made for the intervention of this office, representing as it does, or should, the whole people. The Atlantic company concedes that it has franchises only in the town of Coeymans and possibly in New Baltimore, and under section 63 of chapter 429, Laws of 1907 (Public Service Commissions Law), it cannot do business in any other municipality without obtaining the approval and permission of one of the commissions provided for in that law, and hence no question of a "roving commission" is involved.

The application is denied.

W. S. JACKSON,
Attorney-General.

OPINIONS RENDERED THE GOVERNOR.

Indian Law.

Re petition by chiefs of the Oneida Indians, tribal rights, etc.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 28, 1907.*

Hon. CHARLES E. HUGHES, *Governor of the State of New York,*
Executive Chamber, Albany, N. Y.:

Sir.—Complying with your request of the 15th inst. that I examine into the matter of the petition filed with you by chiefs of the Oneida Indians and advise as to whether any tribal rights of Indians are involved and if so, then as to measures which, in my opinion, should be taken by the State, I have investigated and considered the facts.

The complainants expect to be dispossessed of a parcel of land comprising about thirty-two acres, situate in the former town of Lenox, county of Madison, under a judgment and sale in a partition action pending in the Supreme Court, wherein plaintiff, a white woman, claims an undivided share through individual conveyances made by certain Oneida Indians.

Hon. George F. Lyon, presiding at the October Madison Trial Term, on being advised by this Department of the investigation, readily acquiesced in the suggestion that proceedings in the action should be temporarily stayed and directed such stay.

By treaty made between the State and the Oneida Indians at Fort Schuyler in 1788, the State obtained its first and largest cession of the Oneidas' lands. That treaty provided that the people of the State might prevent any persons, except Oneidas, from residing or settling on the lands reserved to the Oneidas and their posterity by the treaty and that if any person should without the consent of the State, come to reside or settle on such reservation, then the Oneidas and their posterity should forthwith give

notice of such intrusion to the Governor, and further that the Oneidas and their posterity forever should, at the request of the Governor, aid the State in removing all such intruders. That provision has not been abrogated, expressly or by implication, in subsequent treaties, or otherwise. If obsolete, it is because the reservations have ceased to exist.

The thirty-two acres in question, if reservation land, is, with the possible exception of another smaller parcel, the sole surviving remnant in Madison county of the Oneida reservation. This parcel consists of land of which the Oneidas were possessed before the locality was settled by the whites. It is not, then, land to which any existing Indian rights ever originated through direct cession or patent from the State or through subsequent conveyances from white men, whereby a tenure under State law might have been impressed upon it.

The Indian Law provides (section 8), that, except as provided by law, no person shall settle or reside upon any lands owned or occupied by any nation, tribe or band of Indians.

The Public Lands Law provides (section 7), that the Commissioners of the Land Office may require the sheriff of any county to examine and report to them all trespasses committed upon Indian lands in such county. Those regulations were controlling upon and addressed to citizens of the State other than Indians.

By treaty made on June 19, 1840, between the State and the Oneidas then remaining therein and known as the First and Second Christian Parties, and from whom the present complainants descended, and by which treaty their reservation was further reduced by cession to the State, but left so as to include the parcel of land in question here, it was provided (article VI.), that the lands reserved thereunder should not be liable to any sale or transfer, absolute or conditional, or subject to any lease or mortgage, to any person or body, other than the people of the State of New York.

Under those provisions, it is properly and necessarily a matter for Executive inquiry as to whether there in fact remains any land, the intrusion upon which, by white citizens of the State, would constitute a violation of Indian rights which the State obligated itself to protect.

From examination of the records of the State departments and of transactions of record in the county of Madison, and from interviews with the Oneida Indians residing upon the land in question, and with counsel in the partition action referred to, I have ascertained as follows:

A tri-partite treaty was entered into on May 23, 1842, between the First and Second Christian Parties of the Oneida Indians, then residing in the town of Lenox, Madison county, and the people of the State of New York. The latter acted through the Commissioners of the Land Office. That treaty had reference to the then existing reservation of 1388 acres, situate in the town of Lenox, and was concluded at a time when a portion of those Indians intended to emigrate to Wisconsin, the others desiring to retain their old home. Preliminary to that treaty and under aid of the State, a survey of that reservation into nineteen lots of convenient sizes, had been made. The treaty ceded certain of those lots to the State. At the same time and by the same instrument, the emigrating party (article VI.), released to the home party and its successors, all right, title and interest in the lots to be retained by the latter, the treaty declaring that "the lots so reserved shall be deemed the common property of all the Indians to remain and who are enumerated in 'Schedule B' hereto annexed." The thirty-two acres in question is part of lot No. 17, as so surveyed. (Map, new No. 673, Secretary of State's office.)

"Schedule B" recited that it contained an accurate list of all those of the First and Second Christian Parties of the Oneida Indians who "held their lands in severalty," the number of souls located on such lot, their names and the number of the lot. Nevertheless, no separate parcel was allotted to any individual Indian, nor was lot No. 17 carved into smaller parcels. Among the families, groups or small bands to which particular reserved lots were allotted, was a group or band of twenty-three Indians, allottees of lot No. 17. The field notes accompanying the map indicate that this group of twenty-three included four families, as the term family is understood among the whites. The group included Aaron Cooper, also seven other Coopers, presumably wife and children; Moses Charles, Caty Charles, believed to be his wife, and Margaret Charles, Susan Charles and

Mary Charles, their children; Elizabeth Cornelius and three other Corneliuses, presumably her children; Job Antone and five other Antones, probably his wife and children. Appended to "Schedule B" is the certificate of the chiefs and headmen that the schedule shows the names and numbers of the Oneidas who intend to remain on their reservation and to hold their lands "in severalty" and that the field book and map, and certificate of survey accurately show the respective owners of the said lots annexed to their respective names and the quantity of land to which they are respectively entitled. The treaty contains nothing more bearing upon the question of the extent or nature of the interest thus acquired by the twenty-three individuals, making up this group in lot No. 17. Nothing subsequent to the date of that treaty has been found, after careful search, indicating that the common and undivided interests of the members of this group in lot No. 17 was ever severed by any act or authority of the group or of any tribe of which they formed a part and whereby any one or more of them acquired the right as against the others to the exclusive title of possession of the thirty-two-acre parcel in question out of lot No. 17 or any part thereof. That thirty-two acres of land has never been in the actual possession of whites, or any part thereof, but from the earliest times to this day, the whole thereof has been in the exclusive possession of the band petitioning herein, or of their ancestors. Neither the whole or any part of this parcel of thirty-two acres has ever been taxed by public authority under State law, either before the making of the deeds, hereafter referred to, under which whites have claimed rights in that land, nor since the making of those deeds down to this day. The plaintiff in the partition action, has, therefore, never been in possession, unless she be in constructively.

At the present time, twenty-four Indians, all Oneidas, excepting one, a Tuscarora and the wife of an Oneida and two, St. Regis, according to Indian descent, their father being one of those Oneidas, consider this land their home. The twenty-four are not there continuously, many being absent from time to time at various employments. The twenty-four, nevertheless, constitute in fact a band who use this parcel of land among themselves, according to the community of interest incident to Indian custom.

Under that community of interest each member of a band has equal enjoyment of the whole land. Indians had no system for permanent division of that community tenure. There are two houses on this land and one of them, about twenty years ago, gave shelter one winter to no less than twenty-two Indians. There is no record of any documents purporting to release this thirty-two acres, or any part thereof, executed by any of the eight Coopers, the four Corneliuses or the six Antones, all being treaty members of the group to which this parcel was allotted. Nor is there record of such releases by the descendants of those members. The only recorded document found whereby any of this group of allottees assumed, prior to 1882, to convey, either under the authority of the State, or with tribal consent, was a deed from Moses Charles purporting to convey his share, described as 7.44 acres in lot No. 17, located by metes and bounds, which did not include the thirty-two acres, to another Oneida Indian, Daniel Scanandoah, his heirs and assigns. That deed, dated November 12, 1844, is recorded in Liber BG, Madison County Clerk's office, page 392, and indorsed with the approval of tribal agent, Nathan Burchard, and of the first judge of Madison county, as our statutes then provided. While Moses Charles may have thus conveyed his own individual interest, the deed left the separate interests of his wife, Caty, and of the three children, arising under the treaty, in their own shares, unaffected.

The judgment in the partition action recites that plaintiff is entitled only to an undivided $\frac{31}{40}$ interest in this land and she rests her claim upon conveyances executed since 1881 by individual Oneidas, including a mortgage made in 1885, reciting that it is security for the payment of the sum of \$1,250, made by the mother of certain members of the present band and since foreclosed, not by action, but by advertisement. The abstract of title produced in the case begins with the year 1882. The referee found that the remaining undivided $\frac{9}{40}$ share was held by four defendants. Those defendants are among the surviving successors or descendants of the original members of the group to whom the whole parcel as a part of lot No. 17 was allotted. That allotment, as we have already seen, was an inter-tribal act of the Oneidas in 1842, the State, by its presence and in receiving a

cession of other lots to it, by the same treaty, consenting thereto. The referee found this thirty-two acres to be worth \$2,000. It was struck off at the partition sale for \$725. The costs allowed would make a $9/40$ share coming to Indians about \$50. That sum, if equally divided among the Indians who have a home on this land, would amount to a trifle over two dollars each as the equivalent of the right of each and his posterity forever to enjoy a community use of the whole parcel. Under the judgment, ~~four~~ of the Oneidas only participate in the \$50.

The referee was of the opinion that all Oneida Indians of this State are citizens thereof, holding their lands in severalty with no tribe in existence to claim their allegiance. He also found that a sale of this whole parcel was necessary to effect a partition. The record recited that the defendants appeared and pleaded that the court had no right to entertain the suit. Many Oneidas who claim a home on this land were not brought in as parties.

When invoked for protection by an Oneida band, there are facts which State officers may not ignore. The Federal government still recognizes the present New York Oneidas as entitled to receive and still dispenses through their chiefs and to them as survivors of the ancient nation, the annuity of goods provided by Federal treaty of November 11, 1794, with the Six Nations. That treaty acknowledged the lands reserved under State treaty of 1788 to the Oneidas. Our State has recognized the New York Oneidas as a tribe or band by treaties concluded subsequent to 1842, the last having been made on February 25, 1846, and recognized a tribal government in existence as late as 1870, when, by chapter 445, Laws of 1870, the Commissioners of the Land Office were empowered to further treat with them. Before the Governor, the petitioners claimed the standing of chiefs and spoke for the present occupants of this land, who claim to survive as a band and, however small, to be entitled as such to peaceable possession and they deny that they hold by several individual interests. The male occupants interviewed, disclaim citizenship with us, although admitting that they had voted once or twice at our elections, but on occasions when they were either under compulsion of white employers or acted under mercenary inducements to vote offered by whites. Many of the surviving Oneidas,

however, residing in that locality, live on lands leased or purchased from whites and by not living a tribal life, by invoking our courts, submitting to taxation and by repeated participation in our elections, have evidenced their desire for citizenship, and may have acquired that status. Coupled with the use in certain treaties of the term "in severalty," that accounts for a popular impression, undoubtedly entertained, that the Oneida tribe in this State is extinct and that the reservation ceased long ago to exist.

The question presented here is insignificant in the light of the property value involved and affects but a score of Indians, but the duty of the State is, if anything, more pronounced under these circumstances.

While the treaty of 1842 speaks of "a holding in severalty" by the remaining Oneidas of the lots retained by them, it is apparent from the nature of the actual transaction between the emigrating and home bands as evidenced by the treaty, that they did not in fact effectuate any specific allotments in severalty as between individuals, nor did those bands cede or take under State law. The State, in treating with them, acknowledged the competency of those bands to act in their own right. The treaty, at the most, effected an allotment in severalty only as between subbands or groups. The treaty, the schedule and field notes all recite, moreover, that the members of each group hold as between themselves, a common interest, not to themselves and their heirs and assigns, but to themselves and their successors. The emigrating party renounced their interest in all the reserved lots to all the Indians named in "Schedule B." If, then, all the individuals of any group to whom a separate parcel was allotted, had died, all the other groups would succeed to that parcel. The treaty effected a modification of the ancient Indian tenure of perfect community of interest throughout the whole tribe and to all their lands to the extent that the different parcels allotted to groups were as between the groups and so long as the groups exist, to be held in severalty as between groups. That, however, fell far short of constituting a tenure by severalty, as known to our law and under which any individual of a group was competent without the consent of the group, properly evidenced, to transfer his undivided

interest to any one outside the group, or by his own act to convert his undivided interest into an exclusive right to any specific part of the whole tract allotted to the group.

The popular understanding as to what constitutes an Indian tenure in severalty is no doubt founded on allotments as made by the Federal government to Western Indians. Those allotments have been of lands owned by the Federal government and conveyed by it to individual Indians. Here we find no such situation. The consent given by our Legislature to Oneida Indians to take, hold and convey Indian reservation lands as citizens might, has been permissive, but such conveyances do not originate a tenure under our laws until, as between himself and his tribe, the Indian grantor has acquired individually a several interest or a specific parcel. When he has, he may then hold as a citizen holds under our law or alien his interest or parcel to a citizen.

No statute of this State has assumed by its own force to change the interest of the members of an Indian tribe to land held by the tribe under Indian tenure into several interests or into an exclusive right to distinct parcels.

The whole history of the State's dealing with Indians evidences the recognition by the State of the right of a tribe to give or withhold consent to the acquiring by strangers of interests in common or undivided between such strangers and Indians.

By treaty made on March 13, 1841, it was provided (article VI.), that when any Indian family desired to have land out of a reservation divided off to it in common, or two or more families so desired and the remaining members of the party or band assented, the Commissioners of the Land Office were then directed to aid in effecting such division, but the lands so set apart were not to be subject to sale or transfer, absolute or conditional, or to any lease or mortgage to any person other than the people of the State of New York. That treaty provision has never been abrogated.

Chapter 185, Laws of 1843, was passed the year following the making of the treaty of 1842, and served as a legislative ratification. It was there provided (section 3), that any conveyances of any part of the reserved lands were to be made by the Superintendent of the tribe and acknowledged before the county judge.

Section 5, however, recited that when lots were to be sold, it must be only upon consent of the majority of the chiefs and headmen and referred to the tenure by which the lots were held as being "according to Indian usages" and the land as being the common property of all the Oneidas. Conveyances thereof were required to be executed by the superintendent in connection with "the consent of the chiefs and headmen in council" and the proceeds of such sales were to be paid by the superintendent to such chiefs and headmen. Section 6 provided that conveyances made in the manner stated should vest in the purchaser and his or their heirs and assigns, an absolute estate of inheritance in fee simple. That act remained in force until repealed by the Indian Law in 1892. As to the lands of the Oneidas, that act must be deemed to have provided an exclusive method of conveyance whereby the tribal title might be extinguished.

By chapter 486, Laws of 1847, it was provided that thereafter conveyances executed by any Oneida Indian or Indians, might be acknowledged before any justice of the peace and the office of attorney for the tribe was abolished and the duties vested in the superintendent. Section 3 provided that two years after the passage of the act, Oneida Indians should have power to sell and convey real estate the same as if they were natural born citizens. That act remained in force until repealed in 1892 by the Indian Law. It no doubt superseded the act of 1843, so far as it was inconsistent with the former. It did not, however, assume to convert by its own force an existing tribal tenure into a tenure under our law. It did not create in any Indian any property interest different from that which he before held. It was, moreover, an acknowledgment by the State that Oneida Indians were aliens politically as later acts have also acknowledged. The act, then, did not supersede the former act so as to dispense with the consent of the tribe in case of sales or conveyances of tribal lands or in partitioning tribal lands among tribal members. There was no tribal land, then, for the act to operate on until individual Indians should thereafter become possessed of severable interests therein or of specific parcels with tribal consent.

By chapter 420, Laws of 1849, it was provided (section 7), that all bands of Indians who own or occupy reservations within

the State as common property of such bands, might, by the act of their respective Indian governments, divide such lands into lots among individuals or families, so that the same could be held in severalty and in fee simple according to the laws of this State, but that no land so held by any Indian under our laws should be set off to any person other than the occupant or his family and by section 10 it was evidently intended that no lands thus partitioned should, within twenty years, be alienable to a person outside the tribe. That section also declared without any time limit that lands so partitioned should not be subject to any lien or incumbrance by way of mortgage, judgment or otherwise.

Assuming here a true partition in severalty and tenure in fee of this land with tribal consent was effected prior to 1892, when the act last cited was repealed by the Indian Law, then the mortgage to which plaintiff in the partition suit traces her title and which was given in 1885 while the land was held by Indians, was taken in violation of that statute.

The present Indian Law (section 7), continues the provision extending the right to individual Indians who have, by the act of their own Indian government, acquired individually a tenure in severalty or a specific piece of land to hold the same in fee according to the laws of the State, but it continues the prohibition against setting off lands, prior to such tribal partition, to any other than the occupant or his family. The deeds effecting such partitions, before they are entitled to record, are to be approved by the judge of the county.

We thus fail to find the necessary legislative consent required by the Constitution of the State (article I, section 15), to support the title asserted by plaintiff in the partition action.

This band of Indians had no standing in that suit had they been impleaded or had they sought to appear therein.

Our Court of Appeals so held in *Johnson v. Long Island R. R. Co.*, 162 N. Y. 462, saying that to recognize a tribe as a litigant would be contrary to the policy and practice which has long been established in our treatment of Indians, who are to be regarded as wards of the State and possessed of only such rights to appear and litigate in courts of justice as are specially conferred by legislation. Certain members of this band, not the band itself, were before the court in the partition suit.

It was held in the Federal courts in *United States v. Elm*, 25 Federal Cases, No. 13,048, that the defendant, an Oneida Indian, was entitled to vote. In reaching its conclusion, the court said that all New York Oneida Indians were citizens, but seemed not to be advised of the facts here referred to and of which State officers must take notice, showing that a remnant of those Indians still survive as a band with a community tenure of the land they occupy in peace and have been recognized by the State as such band and are untaxed and that members of the band disclaim political allegiance to the State. That is sufficient to distinguish the situation of the Indians in such band from that of Elm.

In *Elk v. Wilkins*, 112 U. S. 94, where it was held that an Indian, separating himself from his band, was not a citizen, the Elm case escaped criticism only because the Court assumed the facts stated in the Elm case were historically true.

If a person is born a political alien of the State, it would seem as essential in determining whether he was a citizen to require evidence of his personal consent to assume the new allegiance as to know that the State was willing to receive him. We find no statute by which the State has undertaken to declare all Oneida Indians citizens, regardless of their own consent. To determine the fact of citizenship in case of a particular Oneida, then, requires a special inquiry as to his history. Where his consent is the only element lacking to determine the question, the fact that he has voted should be *prima facie* evidence of his acceptance of an invitation to assume the new allegiance. But the question here does not turn upon the citizenship of the parties to the partition suit.

Where the record of the last transaction between the State and an Indian band leaves the band in existence and there are still surviving Indians with chiefs to speak for them, who claim to be such band or tribe, they must be recognized as such now by State officers. State laws and the rules which are applied under State laws and through its courts between citizens or between citizens and the State, such as the statute of limitations, the presumptions of grants and constructive possessions, cannot be applied to dispose of the claim of an existing band of Indians to protection under the guardianship assumed by the State toward the de-

pendent Indians within its borders or guaranteed to them by treaty. That relation of guardianship and the reason for it are too well known to require extended reference here.

In *Goodell v. Jackson*, 20 Johnson, 693, the court said, at page 725:

“It was worthy the character of our people enjoying so great a superiority over Indians; in the cultivation of the mind; the lights of science and the distinctions of property and the arts of civilized life, to have made the protection of the property of the feeble and dependent remnants of the nations within our limits, a fundamental article of government. It is not less wise than it is just to give that article a benign and liberal interpretation in favor of the beneficial end in view. We are bound to the performance of that undertaking not only by duty but by gratitude.”

As to the attempt made in that case to evade the constitutional prohibition against purchasing lands of Indians, where the purchase in question had been made of one Indian instead of several, the court said that the transaction was within the mischief as well as within the spirit, if not within the strict letter of the Constitution and that any other construction would withdraw all purchases in detail made of individual Indians, from the protection of the constitutional prohibition.

An uninterrupted line of court decisions from the time of that decision (1823) down to the present affirms that declaration of the dependence of the Indians upon the State and of the obligation on the State's part to extend them its protection.

As to the nature of treaty obligations entered into by the State with Indians, Governor Jay said, in his message of November 1, 1796:

“These treaties are contracts of the State.”

He added:

“We must lead the Indians to rely on our protection.”

The making of an original entry upon Indian lands to come under the jurisdiction of the State, is an act of sovereignty to be performed in such manner as the Legislature may provide.

It is not to be accomplished through judicial action unless expressly so authorized.

In *People v. Dibble*, 16 N. Y. 203 (1857), where it was claimed that the removal of intruders upon Indian lands could not be enforced except by jury trial, the court said that no citizen could acquire a right to enter upon Indian lands until the occupant Indians had been removed by the act of the citizen's own State government. The court there upheld a summary proceeding to remove citizens who had sought to usurp the State's sovereign function. Plaintiff in the partition action, then, may not put herself into possession and dispossess this band through any process purely incidental to her private action.

In *Cayuga Nation v. State*, 99 N. Y. 236, where Indians had invoked the courts, the court considered the rights arising out of an Indian treaty and said of a treaty between the State and the tribe:

"That transaction was a public and not a private one. The treaties were obligatory upon both parties. If violated by either, the other contracting party can alone demand satisfaction and no citizen of the State nor an individual member of the Indian tribe can complain. So long as the State recognizes the tribal organization as existing and deals with it as a nation, the courts and officers of the State must so regard it."

The State alone, then, is competent to come in contact with its existing Indian tribes in matters affecting their rights in reservations arising out of State treaties.

In construing the exemption of reservation lands when actually occupied by Indian bands from taxation, as expressly provided by statute, the court held in *People v. Beardsley*, 52 Barb. 105 (affd. 41 N. Y. 619), that while that statute was, of course, effective upon the citizens and public officers of its own force, it was quite unnecessary as to the Indians themselves, because the State had no power in itself to tax such lands not being subject in the nature of the case to the jurisdiction of the State. The fact that our public authorities have never taxed this parcel of land forbids the State now to take an inconsistent position.

If the rights of this band are violated by citizens of the State and especially if done under color of official action, the right to make a public claim would accrue to this band for adequate redress at the hands of the State. If the band is dispossessed, its homeless members would probably become objects of charity. It is but natural, under those circumstances, that the State should be invoked by a band for many years lost to general notice. As much should have been expected by our citizens who trafficked with two or three of the members without leave of the band or of the State.

The ground I take in reaching my answer to the question referred is, that this Indian band has long been and still is in peaceable possession of this land under a claim of right as against the State and acknowledged by the State. In my opinion, if the band is dispossessed under a sale in the pending suit, that act would constitute a violation of Indian rights.

Our courts have power to look behind their own record to discover who the real parties in interest may be and to take cognizance of outside facts to determine whether there are public interests to be prejudiced. The stay of proceedings directed by the Supreme Court indicates the desire of that department to be informed of facts not revealed in the private suit. The Governor approving, such information will be laid by this Department before the Supreme Court.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE LIEUTENANT-GOVERNOR

State Fair Grounds, Syracuse.

Right of State to take water from city conduits for supply of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

Albany, MARCH 1, 1907.

HON. LEWIS STUYVESANT CHANLER, *President State Fair Commission, Capitol, Albany, N. Y.:*

Dear Sir.—Under date of the 26th inst. you ask the opinion of this Department concerning the right of the State to take water from the water conduits of the city of Syracuse for the purpose of supplying the State Fair Grounds.

Under chapter 631 of the Laws of 1906, providing for the water supply of the city of Syracuse, it is provided in section 2 as follows:

“In consideration of the rights and privileges hereby granted by the State to the city of Syracuse, the State shall be permitted without charge therefor, but under such regulations as shall be prescribed by the officer in charge of the water department, to convey from the water conduits or reservoirs maintained by the city, such supply of water as may be required for the use of the State Fair buildings and grounds.”

By the terms of this act, the State has the undoubted right to be supplied with water for the use of the State Fair buildings and grounds, under such regulations as shall be prescribed by the officer in charge of the water department. These regulations must be reasonable, having in view the necessities both of the State Fair buildings and grounds and of the city water department.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE SECRETARY OF STATE.

Election Law — Party Nominations.

Whether the Independence League is entitled to nominate a candidate for member of Assembly in the Fourteenth District of Kings county.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

February 15, 1907.

HON. JOHN S. WHALEN, *Secretary of State, Albany, N. Y.:*

Dear Sir.— Under date of the 14th inst. you request an opinion for the information of your office, as to whether the Independence League is entitled to nominate a candidate for member of Assembly in the Fourteenth District of Kings county, to be voted for at a special election, by convention, or whether the nomination should be made by means of an independent certificate.

You inform me that according to the official election returns on file in the office of the Secretary of State, and certified to on December 18, 1906, William Randolph Hearst, as the Independence League candidate for Governor received 17,837 votes in this State.

You are advised as follows: Nominations of candidates are provided for by article 3, of the Election Law. Section 56 is entitled "Party Nominations," and reads as follows:

"Nominations made as provided by this section shall be known as party nominations and the certificate by which such nominations are certified shall be known as a party certificate of nomination. Party nominations for candidates for public office can only be made by a convention or by a duly authorized committee of such convention of a political party which, at the last preceding general election before the holding of such convention at which a governor was elected, cast ten thousand votes in the State for such officers, provided, however, that party nominations of candidates for public office

to be voted for only in a town or ward of a city or a village, or subdivision thereof, can only be made by a convention or primary or by a duly authorized committee of such convention or primary of a political party, which, at the last preceding general election, before the holding of such convention or primary at which a governor was elected, cast ten thousand votes in the State for such officer."

Section 57 is entitled "Independent Nominations" and it reads as follows:

"Nominations made as provided by this section shall be known as independent nominations, and the certificate whereby such nominations are made shall be known as an independent certificate of nomination."

The section further specifies as to the number of voters necessary to take part in making such nominations for different political districts, and thus provides:

"Independent nominations shall be made by a certificate subscribed by such electors, each of whom shall add to his signature his place of residence and make oath that he is an elector and has truly stated his residence."

Also,

"The certificate * * * shall designate in not more than five words the political or other name which the signer shall select, which name shall not include the name of any organized political party."

The above are the only provisions of the law for the making of nominations.

By reason of the vote cast the Independence League has become entitled to make nominations by convention or by a duly authorized committee of such convention, or in case of offices to be voted for only in a town or ward of a city or of a village or subdivision thereof by a primary or convention or by a duly authorized committee of such convention or primary.

In Matter of Ward, 36 Misc. 727, affirmed in 69 App. Div. 615.

The provisions of the Election Law above quoted indicate the

purpose of the Legislature to exclude from recognition as political parties, so far as making nominations by primary or convention is concerned, all new political bodies until they have obtained a following of ten thousand voters in a State election as tested on the vote for Governor. Until a political party movement shall acquire that strength, it must act in making nominations as an independent political body, and by independent certificate of election signed directly by electors. In such a case, also, the certificate may not use or include the name of any organized political party. It was the apparent purpose of that provision to prevent a political body from acting in the making of nominations as an independent political body if it has acquired the status entitling it to nominate by primary and convention.

It will follow, on the other hand, that a political body which has acquired the right to nominate by primary and convention thereby loses its right to nominate by independent certificate of nomination, continuing during the period in which the party nominating status or strength of ten thousand votes on office of Governor is retained.

You are therefore advised that the Independence League in the approaching special election in the Fourteenth district of Kings county, may only file nominations by party certificate of nomination.

In order to prevent misapplication of this opinion, it should be said that the Primary Election Law, being chapter 179, Laws of 1898, as amended, will not apply to the primaries and conventions which may thus be held by the Independence League. Its procedure in respect thereto should be such as is provided for by the rules and regulations of that party, subject only to the general regulation over all primaries and conventions which is provided by sections 50, 51, 52, 53, 54 and 55 of article III of the Election Law, and subdivision 4 of section 4 of the Primary Election Law. The Independence League, however, may elect, if it received less than three per cent. of the entire vote cast in the State at the last general election for Governor, to come in under the Primary Election Law, as provided by section 13 thereof.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Real Property Law — Aliens.

Filing with Secretary of State deposition of alien residing without State of New York.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 4, 1907.*

To the Honorable, the Secretary of State.:

Dear Sir.— I am in receipt of your communication of the 13th inst., stating that you have received a deposition from Anna Friis, an alien residing in Howell, S. D., who has declared her intention of becoming a citizen of the United States, and asking my opinion whether a deposition made by an alien residing outside of the State of New York should be filed in your office pursuant to the provisions of sections 4 and 5 of the Real Property Law.

In reply I have the honor to say that section 4 of the Real Property Law reads as follows:

“ § 4. Deposition of resident alien.—An alien who, pursuant to the laws of the United States, has declared his intention of becoming a citizen, and who is, and intends to remain, a resident thereof, may make a written deposition to such facts before any officer authorized to take the acknowledgment or proof of deeds to entitle them to be recorded within the State. Such deposition must be certified by the officer before whom it is made, and may be filed in the office of the Secretary of State, and when so filed, must be recorded by him in a book kept for that purpose. Such deposition shall be presumptive evidence of the facts therein contained.”

This section was substantially adopted from the Revised Statutes by chapter 272 of the Laws of 1834.

(See report of Commissioners of Statutory Revision, Assembly Document No. 87, for 1896.)

The Revised Statutes originally provided that “ any alien who has come or may hereafter come into this State may make a depo-

sition * * * that he is a resident of this State * * * ,” but by the amendment by chapter 272 of the Laws of 1834 the section was made to read as follows:

“Any alien who has come or may hereafter come into the ‘United States’ may make a deposition or affirmation in writing, before any officer authorized to take the proof of deeds to be recorded, that he is a resident of, and intends always to remain in, the United States and to become a citizen thereof as soon as he can be naturalized,”

and provides for the filing of such certificate in the office of the Secretary of State.

The present reading of the law clearly permits the deposition mentioned to be made by an alien residing in any part of the United States who has declared his intention of becoming a citizen, and who is and intends to remain a resident of the United States.

If the deposition of Anna Friis has been properly authenticated, it is entitled to be filed and recorded in your office.

Your respectfully,

WILLIAM S. JACKSON,
Attorney-General.

Corporation Law.

Business Corporations. University Drug Shop—Use of word “University” as part of title.

STATE OF NEW YORK,

ATTORNEY-GENERAL’S OFFICE,

ALBANY, May 10, 1907.

HON. JOHN S. WHALEN, *Secretary of State, Albany, N. Y.:*

Dear Sir.—In your letter of the 19th ultimo you state that a certificate has been presented to your office for filing, by a proposed corporation which seeks to assume the corporate title of the “University Drug Shop.”

You ask the opinion of the Attorney-General as to whether the word “University” may be used as a part of the title of a cor-

poration organized under the Business Corporations Law, in view of the provisions of section 33 of the University Law (L. 1892, Ch. 378), which, so far as material, reads as follows:

“No individual, association or corporation not holding university or college degree-conferring powers by special charter from the Legislature of this State or from the Regents, shall confer any degrees, nor after January first, eighteen hundred and ninety-three, shall transact business under, or in any way assume the name university or college, till it shall have received from the regents under their seal written permission to use such name, and no such permission shall be granted by the regents, except on favorable report after personal inspection of the institution by an officer of the university. * * *.”

If a precedent is established by allowing this proposed corporation to use either of the prohibited words upon the contention that it is a business and not an educational corporation, the door is opened for the use of such words by other business corporations, some of which might desire to engage in operations of an educational character, for I am of the opinion that certain kinds of institutions for educational purposes and for the promotion of education and instruction might be organized under the provisions of the Business Corporations Law.

The prohibition of this section is general and does not differentiate between corporations formed for educational and those for business purposes. It is apparent that the unrestricted use of the word “university” or “college” as a part of the corporate name of a company created pursuant to the Business Corporations Law would be apt to lead to abuses and deceptions.

In my opinion, the discretionary power as to the use of the words in question is intended by the statute to be vested in the Regents of the University of the State of New York, and not in the Secretary of State.

Yours truly,

WILLIAM S. JACKSON.

Attorney-General.

Stock Corporations Law.

Increase capital of Second United Cities Realty Co.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 10, 1907.

Hon. JOHN S. WHALEN, *Secretary of State, Albany, N. Y.*:

Dear Sir.—You have submitted to this office the certificate of increase of capital stock of the Second United Cities Realty Company, which has been presented to your office for filing.

This certificate seeks to effect an increase of capital stock by the unanimous written consent of the stockholders in accordance with the provisions of sections 45 and 46 of the Stock Corporations Law. Upon its face the instrument presented to your office for filing shows that, instead of being the unanimous consent of the stockholders of the corporation, there has been obtained only the consent of the holders of common stock. It appears that the corporation has both preferred and common stock issued and outstanding, and that the holders of the preferred stock have not participated in this proceeding.

It is contended on behalf of the corporation that by a provision in the certificate of incorporation the holders of the preferred stock have been debarred from voting privileges and that, therefore, the written consent of stockholders of that class is not essential in order to effectuate an increase of capital stock by the unanimous consent of stockholders.

I am unable to agree with the contention of the corporation in that respect. The statute provides two distinct methods of accomplishing an increase of capital stock, one by the unanimous consent of the stockholders expressed in writing, and the other through proceedings at a meeting of the stockholders. The former plan is the one selected in this case. The law does not specify that under certain circumstances a lesser number may consent to the increase, but unqualifiedly provides for an increase by the unanimous consent of the stockholders, which can mean nothing less than all the stockholders.

I am inclined more readily to this conclusion by the determination of the court in the case of *Katz v. H. & H. Mfg. Co.*, 109

App. Div. 49, where it was held that a by-law requiring the vote of those holding a larger percentage of stock than the statute required to effect a change in the number of directors was null and void. It should, therefore, follow that a corporate regulation which provides for the consent of a smaller percentage of stock than the statute requires is null and void, and that the certificate in question should be rejected.

Yours respectfully,
WILLIAM S. JACKSON,
Attorney-General.

Membership Corporations Law.

Mt. Sinai Alumnae Association.—Whether extension of purposes may include pension funds or annuities paid to its members.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 20th, 1907.

HON. JOHN S. WHALEN, *Secretary of State, Albany, N. Y.:*

Dear Sir.—You have referred to this office a communication from Messrs. Hoadley, Lauterbach & Johnson, of New York city, who desire to extend the purposes of a corporation organized under article 2 of the Membership Corporations Law so as to include, among other things, the following purposes:

“The accumulation, maintenance and application of a pension fund in the following manner:

(1) Each member of the association who shall have been nursing for twenty years after graduation shall be eligible for a pension for the remainder of her life.

(2) A member after at least five years' nursing, who has supported herself by other occupation for the remainder of twenty years shall be eligible for the pension.

(3) Each applicant for the pension must have been a member of the association for twenty years or have paid two hundred dollars into the treasury in addition to any initiation fee.

(4) A member who becomes totally disabled or incapacitated for self-support before the expiration of twenty years after graduation may procure the pension upon certain recommendations.

(5) No pension shall be paid until the fund of at least sixty thousand dollars is in the treasury.

(6) No pension shall exceed twenty-five dollars per month, and if the net income of the association after the payment of current expenses shall not be sufficient to pay a pension of twenty-five dollars per month to each applicant who is eligible therefor, then such net income shall be divided equally between the applicants who are so eligible."

You ask if the extension of purposes is within the scope of the act.

The proposed extension of purposes is intended to enable the Mount Sinai Alumnae Association to pay annuities to its members in certain contingencies and upon specified terms. Such transactions, according to my view, constitute insurance.

The Membership Corporations Law, article 2, section 30, under which it is intended to carry on such business, reads as follows:

"2. A membership corporation may be created under this article for any lawful purpose except a purpose for which a corporation may be created under any other article of this chapter, or any other general law than this chapter."

There is nothing in the section above quoted that authorizes the formation of a corporation for the purpose of insurance. The State has adopted a definite policy of restriction and supervision concerning the affairs of corporations organized for carrying on the business of insurance. It is not to be presumed that the Legislature, in the enactment of the Membership Corporations Law, intended to sanction the creation thereunder of insurance corporations merely because some unusual scheme of insurance had not been specifically provided for in the general law regulating the organization of insurance corporations.

In my opinion, the certificate should be rejected.

Yours respectfully,

WILLIAM S. JACKSON,

Attorney-General.

Election Law.

Whether Secretary of State shall include in notices of election for November, 1907, the notice of election for Senators.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *July 1, 1907.*

HON. JOHN S. WHALEN, *Secretary of State, Albany, N. Y.:*

Dear Sir.—Replying to your request for my opinion as to whether notices of the election to be held in November next and required by section 5 of the Election Law to be issued by you, should include notice of election of Senators:

The Constitution required that Senators be chosen at the election held in November last and Senators were then chosen but by districts created under a legislative apportionment of the State made in 1906. That apportionment has since been adjudged unconstitutional and void by the Court of Appeals. (*In re Sherrill*, 188 N. Y. 185.)

The Senate so chosen is a *de facto* body brought into being and continuing throughout its existence in violation of the Constitution and presumably against the wishes of the people.

De facto officers have no right in law to the tenure of their offices, but may exercise official functions, if they will, during the time required for the machinery of government to oust them, or until the appointment or election of *de jure* officers. If the administrative department is inactive, the *de facto* officers may serve full terms.

Necessity for government by law requires that *de facto* officers be superseded by *de jure* officers as soon as possible. This is the general rule in cases analogous to that of the Senate and runs through the whole body of our statute law in providing for ouster and supersedure of incumbents who are intentionally or otherwise, usurpers of offices created by legislative action. This rule should guide administrative officials charged with the conduct of elections and it is not qualified by any discretion lodged with them.

The courts apply the rule in the exercise of their implied powers, when invoked, in order to so control officers charged with the conduct of elections as to restore or provide government in harmony with constitutional designs. In the case of the Legislature such restoration can only be accomplished through the machinery of election. The necessity for having the office of Senators exercised cannot uphold the tenure of the present Senate beyond the time when a *de jure* Senate may be chosen and the next election affords that opportunity. Our courts have held that the occasion of a general election in an intervening year may be seized to choose a *de jure* officer to serve out the current term of an elective office.

It may be contended that this question ought to be deemed closed in favor of a full term for the present Senate by the discussion of the Court of Appeals while declaring void the apportionment of 1906. A careful reading of the opinion of Chief Justice Cullen, however, shows that he discussed the status of a constituent member of a legislative house. His opinion did not deal with the question and did not hold that a legislature whose entire membership is unconstitutional may not be superseded by a constitutionally elected legislature at the earliest opportunity.

And Justice Chase, in the prevailing opinion, said: "I concur in the views expressed by Cullen, Ch. J., as to the effect of the acts of a *de facto* legislature so long as its members remain actual incumbents of their offices respectively." At the same time the court clearly affirmed that the conduct of elections was subject to control by the courts so as to insure compliance with the Constitution.

Under the Constitution Senate and Assembly districts are correlated. If the tenure of the present Senate continues through the year 1908, there would arise the anomaly of its co-existence with a new Assembly chosen upon the basis of a different apportionment. Moreover, the Court of Appeals condemned the apportionment on which the Senate was chosen both because of gerrymandered districts and inequality of representation. If present Senators chosen on such an apportionment shall hold for full terms and after opportunity to supersede them at a regular

intervening election has occurred, the result, under all the circumstances, would imply either that the law was unequal to the emergencies of government, or that administrative officers had been negligent in the conduct of elections.

Since the Constitution provides that the Senate shall be regularly elected at the same time with the Governor and other principal State officers, Senators elected this year will serve only for the remainder of the current constitutional term of two years, *i. e.*, until January 1, 1909.

Notices of election to be given by you should therefore call for the election of Senators in all districts to serve for unexpired current terms.

The notices should also call for the holding of the election according to the apportionment of the Constitution of 1894. In view of the unusual nature and importance of the matter I advise that you act at the earliest day possible in order to invite and afford full opportunity for action by the courts before the election occurs.

Yours truly,
WILLIAM S. JACKSON.
Attorney-General.

Business Corporations Law.

Nickel Plate Elevator Company, cannot incorporate under provisions of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 3, 1907.

Hon. JOHN S. WHALEN, *Secretary of State, Albany, N. Y.:*

Dear Sir.—In your letter of the 24th ult. you submitted to this office the certificate of incorporation of the Nickel Plate Elevator Company and asked me to pass upon the tenth subdivision thereof, which reads as follows:

"The corporation shall have the power and right to purchase, subscribe to, acquire, hold and dispose of the stock, bonds and other evidences of indebtedness of any corporation, domestic or foreign, for whatever purpose organized and in whatever business engaged, and issue in exchange therefor its stock, bonds or other obligations or evidences of indebtedness, or to pay therefor in cash or otherwise, and while owners or holders thereof, to execute all the rights and powers of ownership, including the right to vote thereof for any purpose or to do any acts or things necessary or proper for the protection or development of such corporation and *to control and manage the affairs and take and carry on all or any part of the business or property and to guarantee or assume any liability of any such corporation, and the corporation is authorized to do any and all of said acts or things.*"

The above-mentioned certificate is presented to your office for filing in order to create a corporation under the Business Corporations Law. Said law provides for the organization of stock corporations for any lawful business other than a monied corporation, a railroad corporation, transportation corporation, etc. This language clearly indicates the intention of the Legislature to restrict the scope of the law in question so as to permit of the incorporation thereunder of only such stock corporations as are not otherwise provided for. Railroad, electric light and monied corporations cannot be created under the Business Corporations Law. It therefore follows that a corporation cannot be formed under said law to control and manage railroad enterprises, insurance companies, banks or like institutions; but the language above underscored is broad enough, in my opinion, to contemplate the control and operation of concerns of that character, and such operations are beyond the scope of the law under which the proposed corporation seeks its corporate rights and franchises.

Another objectionable feature in a portion of the underscored words is the assertion of the right "to guarantee or assume any liability of any such corporation." The words quoted constitute a power sufficiently comprehensive to contemplate a guarantee of

the liability of any kind of corporation, including banks and insurance companies. The only power conferred upon a business corporation to guarantee the liabilities of another corporation is that contained in section 40 of the Stock Corporations Law, in which the following provision is found conferring the right, under limitations:

"Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose, by notice in writing, signed by a majority of the directors of such corporation, stating the time and place and object of the meeting, and served upon such stockholders appearing as such upon the books of the corporation, personally or by mail, at his last known post-office address at least sixty days prior to such meeting, *guarantee the bonds of any other domestic corporation engaged in the same general line of business.*"

Said section further provides:

"And any stock corporation owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time and place and object of the meeting and served upon each stockholder appearing upon the books of the corporation, personally or by mail, at his last known post-office at least sixty days prior to such meeting, guarantee the bonds of such other corporation."

It will thus be seen that a business corporation can only guarantee the bonds of another domestic corporation engaged in the same general line of business. The certificate presented to you for filing seeks to give the proposed corporation the power of guaranteeing any liability of any kind of corporation whether it is engaged in the same general line of business as the guarantor or not. The power sought to be exercised is not conferred upon business corporations by our statutes, and any attempt to exercise such power would be unlawful. In the General Corporations

Law, section 10, it is provided that "No corporation shall possess or exercise any corporate powers not given by law or not necessary to the exercise of the powers so given." This is merely the statutory statement of the law as it has always existed. A business corporation can engage in no guarantee business beyond that granted by section 40 of the Stock Corporations Law. It is a well established rule of construction of statutes vesting privileges in corporations that the specification of certain powers operates as a restraint to such objects only and is an implied prohibition of the exercise of other and distinct powers. (*Crocker v. Whitney*, 71 N. Y. 161; *People v. Utica Ins. Co.*, 15 Johns. 383; *N. Y. F. Ins. Co. v. Ely*, 2 Cowen 678.)

Whenever a statute confers upon a corporation any definite or specific powers, such powers so granted by the statute must be exercised within the terms of the grant. They cannot be enlarged or amplified, but may be limited or restricted by inserting provisions in the certificate of incorporation to that effect.

In view of the foregoing considerations, I advise you to refuse to file this certificate of incorporation.

Yours truly,
WILLIAM S. JACKSON,
Attorney-General.

Election Law.

Notices of election for unexpired terms.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 25, 1907.

HON. JOHN S. WHELEN, *Secretary of State, Albany, N. Y.:*

Dear Sir.—Replying to your today's request for advice, will say that since my opinion to you of July 1, 1907, the Legislature, by chapter 727, Laws of 1907, having made a new apportion-

ment, the notices of election of senators for the unexpired current terms should be according to such new apportionment instead of the apportionment of 1894.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

General Corporations Law — Foreign Corporations.

Jardine Matheson & Company, Limited. Designation of person upon whom process may be served.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *August 2nd, 1907.*

HON. JOHN S. WHALEN, *Secretary of State, Albany, N. Y.:*

Dear Sir.—This office is in receipt of your communication of the 1st instant, inclosing papers in the matter of Jardine Matheson & Company, Limited, a foreign corporation, which, through its counsel, has presented to your office papers required by sections 15 and 16 of the General Corporations Law.

Said certificate seeks the usual certificate of authority to transact business in the State of New York, and has, apparently, complied with your interpretation of the statute in every respect except one.

In regard to the designation of a person upon whom process may be served, the papers in question make the following statement, to wit:

“That said corporation hereby designates Alexander D. Walker and Walter E. Allen, or either of them, as the persons upon whom a summons may be served within the State of New York,” etc.

In my opinion, the clause as quoted constitutes a full compliance with the statutory requirements as to the designation of a person to receive process. The words “or either of them” design-

nates that either one of the persons named may be served with process against the corporation.

The object of the law is evidently for the purpose of facilitating the service of process upon foreign corporations doing business within the State of New York. It seems to me that where two persons have been designated so that process may be served upon either of them, it greatly facilitates the service of papers upon the corporation and satisfies every requirement of the statute. I incline more readily to this interpretation of the statute from the fact that the Statutory Construction Law, section 8, provides that "words in the singular number include the plural, and in the plural number include the singular."

I advise you to file the papers.

Inclosed herewith I am returning the papers transmitted by you to this office.

Yours respectfully,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE COMPTROLLER.

Stock Transfer Tax Law:

Refund of taxes, power of Comptroller regarding.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *January 25, 1907.*

HON. MARTIN H. GLYNN, *Comptroller of the State of New York,*
Albany, N. Y.:

Dear Sir.—In reply to your communication of the 17th instant, requesting this office to furnish you with an opinion in regard to your power to refund taxes claimed to have been paid in excess of the requirements of the Stock Transfer Tax Law, I beg leave to inform you that in my opinion, no authority has been

vested in the Comptroller to make refunds of taxes claimed to have been paid in excess of the requirements of said law.

Section 109 of the Tax Law, to which you refer, appears to have no application to taxes paid under the provisions of Article 15, which relates exclusively to the taxation of transfers of stock. Said section 109 is a part of Article 5 of the Tax Law which embodies a complete system respecting the collection of non-resident taxes. The various sections of Article 5, have reference only to the subject of non-resident taxation, and it is not to be presumed that said section 109 has any application to the general subject of taxation. It certainly could not be construed as applying to the subject of corporation taxes, which is treated of separately and in its entirety in Article 9, and evidently this has been the method adopted by the Legislature; that is, to embody all of the provisions relative to various classes of taxes in the several different articles of the Tax Law, so that each particular article shall be complete and entirely independent of the other articles and contain all the provisions of law relating to the particular class of taxes treated of therein. This appears to have been the plan except in respect to the general provisions of Article one.

I do not find that the Legislature has made any provision for the creation of any fund to enable the State Comptroller to make refunds of taxes paid under Article 15 of the Tax Law.

In the event that rival claimants were seeking to have refunds of an identical tax that had been paid under the Stock Transfer Tax Law, there are no proceedings provided for by the Legislature whereby the Comptroller has the power to hear and determine such claims.

I am of the opinion that the Comptroller has no power in the premises to make the refund of taxes referred to in your communication.

Respectfully yours,

WILLIAM S. JACKSON.

Attorney-General.

Public Health Law — State Commissioner of Health.
Traveling expenses of officers appointed by Commissioner.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 12, 1907.

HON. MARTIN H. GLYNN, *State Comptroller, Albany, N. Y.:*

Sir.— In reply to your communication of the 9th instant:— You state that Dr. Edwin H. Wolcott is a Director of the Division of Contagious Diseases, at a salary of \$1500, and as such Director, has charge of the Medical Experts, covering a large part of the State, more particularly the Western part of the State and Southern Tier; also that he is a practicing physician, residing at Rochester, and does the greater part of his work from that point, but is compelled, by order of the Commissioner of Health, to report weekly at Albany.

You ask if he is entitled to an allowance of expenses for travel from Rochester to Albany and return and while at Albany, upon the occasions of such weekly reports.

The Public Health Law, section 3, authorizes the State Commissioner of Health to employ such clerks and other assistants as are necessary for the proper performance of the powers and duties of that Department, and to fix their compensation within the amounts appropriated therefor by the Legislature.

The Appropriation Act of the present year provides for the Health Department necessary traveling expenses of the subordinates of that Department while in the discharge of official duties, pursuant to the written order of the Commissioner.

The State Finance Law, section 12, provides that no payment shall be made to any salaried State officer or commissioner having an office established by law, for personal expenses incurred by him while in the discharge of his duties as such officer or commissioner at the place where such office is located.

The office of the State Department of Health is at the Capitol at Albany. Dr. Wolcott is a salaried State officer in that Department, and is not entitled to be reimbursed for personal expenses

incurred by him while at Albany. He is not entitled to receive traveling expenses from his home to Albany, when that travel is undertaken by him, not in the discharge of his official duty, but in order that he may present himself for duty where it is required at the office of the Department. Such is the nature of his travel from his home in Rochester to report weekly at Albany.

If he is required by the written order of the Commissioner of Health to visit places other than Albany, he is entitled to be reimbursed his actual and necessary expenses, according to the usual route of travel, from any point where he then may be to such required places and return to Albany.

To regard the place of an officer's residence as the location of his office might, in some instances, work a saving to the State, but the application of such a rule generally in all the Departments would lead to a great increase of State charges, never contemplated by law.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Tax Law — Corporations.

In re assessment E. Watson Gardiner Company.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 12, 1907.

HON. MARTIN H. GLYNN, *State Comptroller, Albany, N. Y.:*

Dear Sir.—You have submitted to this office the annual tax report and other papers in the matter of the taxation of the E. Watson Gardiner Company for the year ending October 31, 1906, under the provisions of section 182 of the Tax Law. You ask whether or not an assessment against said company measured by a dividend rate of thirty-six per cent. is correct.

In the annual report filed in your office the company states that no dividend was paid during the year mentioned. In the supplemental affidavit filed March 7, 1907, it is shown that three officers of the company were paid in the aggregate seventy per cent. of

the profits for their services instead of fixed salaries; that one of such officers, the president, devoted his entire time to the business of the company and received forty per cent. of the profits for his services as general manager and salesman; that the treasurer in like manner received twenty per cent. of the profits as compensation for his services; that the assistant treasurer and attorney for the corporation received for his services ten per cent. of the profits; that the secretary, who owns one-sixth of the capital stock, received no salary or compensation as his services were merely nominal, and that he received no revenue in the nature of a dividend or otherwise from the company. The balance of the profits were set aside for carrying on the business of the corporation.

The supplemental affidavit states that the names of the stockholders and their share holdings were as follows:

E. Watson Gardiner (President).....	50 shares
Harry T. Warnick (Treasurer)	25 "
J. Howard Hanson (Asst. Treas. and Atty.)..	45 "
John K. Warnick	25 "
H. D. Loder	5 "

Total 150 shares

Although a statement was made in the original report filed in your office, to the effect that the corporation was owned by three interests, it is evident from the above that the term "three interests" did not necessarily imply that there were only three stockholders, because, as appears above, there were actually five stockholders. It appears that only three persons received any compensation from the corporation and that such compensation was not distributed in proportion to their respective holdings of stock. This is evident from the payments made to the president and to the assistant treasurer, who received, respectively, forty per cent. and ten per cent. of the profits, although their interests in the corporation were nearly equal, the former being the owner of fifty shares and the latter forty-five.

It is a rule of law applying to the payment of dividends by corporations that such payments must be ratable in accordance

with the holdings of stock of the same class. Every shareholder has a right to participate in the distribution of the surplus profits of the corporation in proportion to his interest in the company. There can be no discrimination in the distribution of dividends when the stock is all of one kind, as it was in this case. It follows that the payments to the officers of this corporation apparently were not intended to be in the nature of dividends but were payments actually made as compensation for services rendered, and the assessment based upon the theory of a dividend of thirty-six per cent. was unauthorized.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Stock Transfer Tax Law.

(Chapter 341, Laws of 1905.)

Intent of Legislature to impose no more than a single tax upon one sale of stocks.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 1, 1907.

Hon. MARTIN H. GLYNN, *State Comptroller, Albany, N. Y.:*

Replying to your request for my opinion respecting the Stock Transfer Tax Law:

The communication sent to your office, a copy of which has been submitted to me, cites an instance in which shares of stock were registered in the name of Spencer Trask & Company, stock brokers, for convenience of delivery only, and on which no actual change of ownership occurred or was intended. The statement made by the brokerage house is to the effect that the certificate of stock was transferred to them in accordance with rules of the New York Stock Exchange; that such transfer was neither in

pursuance of a sale of the stock nor any change of ownership whatsoever, but was made for the sole purpose of enabling Spencer Trask & Company, as brokers, acting for the owners in making a sale of the shares represented by said certificate, to make a transfer and delivery in case of such sale, to the vendee who was thereupon to become the owner of such shares of stock.

It would thus appear that but one actual sale and transfer of ownership of the shares of stock was contemplated by the parties interested. In this view of the circumstances, I am of the opinion that but one tax lawfully could be exacted in the transactions looking toward this one sale of stock.

Another instance, cited in your communication, relates to a case where a proposed vendor held certificates of higher denominations than those intended to be sold, and, for the purpose of making the sale, obtained from the transfer office of the corporation certificates of smaller denominations merely as a matter of convenience to facilitate the transfer of the same to different vendees. It seems to me that the ruling with reference to the first cited instance also would apply with equal force to the facts set forth in the second transaction.

A fair interpretation of the Act of 1905, chapter 241, relating to the tax on transfers of stock, seems to lead inevitably to the conclusion that the Legislature, in the enactment thereof, did not intend to prescribe a double tax in a case wherein only one change of ownership of the identical shares of stock was involved, but, on the other hand, sought to impose no more than a single tax upon one sale or agreement to sell such shares of stock.

Yours respectfully,
WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law.

Whether Comptroller should recognize notices of liens against moneys to be paid by State to Jane E. Waugh.

STATE OF NEW YORK.

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 1st, 1907.

HON. MARTIN H. GLYNN, *State Comptroller, Albany, N. Y.:*

Dear Sir.—Replying to your request of the 7th ult. for my opinion as to whether certain notices of lien against moneys to be paid by the State to Jane E. Waugh should be recognized by you:

Chapter 147, Laws of 1903, provides for compensating the owners of lands taken for the use of the improved canals by giving the Court of Claims jurisdiction to determine the amount of compensation and making an appropriation for the payment of such awards.

Chapter 335, Laws of 1904, creates a board of special examiners and appraisers with the duty to inspect lands so appropriated and with power to fix and determine upon a fair valuation and agree with the owner upon a price to be paid for full compensation or damages. Such agreement is to be made in writing and submitted to the Canal Board and if, in the opinion of the Canal Board, it is possible by means of such agreement to acquire for the State a good title, and it will be for the advantage of the State to obtain such property without condemnation proceedings or resort by said owners to the Court of Claims, "said Canal Board shall approve such agreement * * * and, upon the presentation and delivery of proper conveyances duly approved by the Attorney-General, said Canal Board may certify its acceptance thereof to the Comptroller for payment * * * to the owner or owners severally named therein. The Treasurer shall pay to such owner or owners upon the warrant of the Comptroller, after due audit by him, the amounts specified in such certificate."

On August 7, 1906, the State served upon Jane E. Waugh a notice of appropriation of her lands in the city of Fulton, Oswego county, for said canal improvement purposes, and on March 5,

1907, the Board of Special Examiners and Appraisers entered into a written agreement with her, whereby the sum of \$600 was agreed upon as the compensation to be paid by the State. This agreement was approved by the Canal Board on March 27, 1907, and, on the same date, a duly certified abstract of the owner's title was approved by this Department, showing title in Jane E. Waugh, but showing no lien against the property in favor of the United States Title, Guaranty and Indemnity Company, or Hugo Hirsch.

By a written notice served upon the State Comptroller and dated June 4, 1907, the United States Title, Guaranty and Indemnity Company claims a lien upon said purchase money to the amount of 10 per cent. thereof, and notifies the Comptroller not to pay over the same to any other than the said company, or its duly authorized counsel, Hugo Hirsch, of the city of New York, unless the said lien or claim is satisfied. Annexed to such notice is another notice subscribed by Hugo Hirsch, an attorney-at-law, in which he claims to have rendered or caused to be rendered professional services in connection with the "said claim," for which he has a lien and demands payment thereof, and further notifies the Comptroller not to pay any part of said claim to any person whatsoever, except his lien against same is satisfied.

The company has furnished this Department with a copy of a written agreement upon which its claim is based, as follows:

"FULTON, N. Y., *March 9, 1906.*

"The undersigned, for myself, my representatives and assigns, hereby authorizes the United States Title, Guaranty and Indemnity Company, by its attorneys and agents to take whatever proceedings are necessary to represent my property, 3 lots and Bldgs., on No. First Street in the City of Fulton, for the purposes and at the rates stated below, which I agree to pay and hereby assign to it therefor. Said company to pay all expenses out of their fees. No charge for services unless there is an award made. Name of owner.

(Signed) MRS. JANE E. WAUGH. .

"RATES.

"1. For obtaining an award or compensation for the taking of said property, or any part thereof, appropriated for the use of the State canals ten per cent. of the award, compensation or other consideration therefor.

"2. For obtaining an award for damages to said property due to any change of grade, one-quarter of an award or compensation.

"3. For obtaining an award or any other damages to said property due to said proposed improvement, one-third of the award or compensation.

"4. For obtaining an award for damages resulting from the abandonment of canal lands or any other injury to said property by reason of such abandonment or closing, one-half of the award or compensation.

"JANE E. WAUGH."

In response to a written request to Hugo Hirsch that he furnish this Department with a copy of any contract upon which his claim of lien was based, a letter has been received from the company above named, which says: "We have sent you the contract or assignment upon which this claim is based, being one of this company, employing Hugo Hirsch as attorney to represent Jane E. Waugh, who did represent her."

The United States Title, Guaranty and Indemnity Company was formed by a merger of the Long Island Title, Guaranty Company and the People's Guaranty and Indemnity Company. The former company had the power to make and guarantee abstracts of title to real property. The latter company, incorporated under chapter 979 of the Laws of 1896, had the following powers:

"Section 8.—The corporation hereby created shall have the general powers and privileges and shall be subject to the liabilities mentioned and declared in the general corporation laws of the State of New York applicable thereto and in addition thereto shall have power to act as the agent or attorney in fact of persons, copartnerships or corporations in tak-

ing charge of sale of property, real and personal, leasing or renting real estate, to guarantee the title to the same and the payments of rents, dividends, coupons, interest on bonds and mortgages and to guarantee the payment to any owners, mortgagees, lessees or other persons or corporations interested in any real estate, due compensation for the whole or any portion thereof or interest in such real estate which may be taken by any corporation of the United States or of this State in any proceeding now pending or which may hereafter be instituted, for the condemnation or acquisition of said real estate or such interest as aforesaid * * *. The said company shall or may charge such commissions as compensation for services rendered by it as shall be provided for by its by-laws and agreed upon between said company and the person * * * with whom and with which it may have business transactions * * *."

Ordinarily, in case of disputes between third parties over funds due from the State, the action of the courts would be awaited; but since the present improvement of the canal was undertaken, numerous notices of lien, like the one in question, have been filed by this same corporation, revealing a practice which should receive no encouragement.

The claim on the part of the company that under the paper signed by the owner it had acquired some right by assignment is without force. The clause referred to is too indefinite to be valid, but if the clause was intended as an assignment of damages, it was void, because, on the day of its execution no damages had been sustained, for the State had not then appropriated the land.

Section 74 of the Code of Civil Procedure provides:

"An attorney or counselor shall not, by himself, or by or in the name of another person, either before or after action brought, promise or give, or procure to be promised or given, a valuable consideration to any person, as an inducement to placing, or in consideration of having placed in his hands, or in the hands of another person, a demand of any kind for the purpose of bringing an action thereon."

An agreement by an attorney to advance the expenses of litigation in order to induce the placing of a claim in his hands for prosecution has been held to be violative of such a statutory provision.

Coughlin v. N. Y. C. & H. R. R. Co., 71 N. Y. 443, 452.

Therefore, an attorney or counselor can have no lien under the contract in question, it being an unlawful contract for him to enter into.

Upon the part of the corporation such a contract may not be invalid (under the decision of *Irwin v. Currie*, 171 N. Y. 409), because the code prohibition is directed solely against attorneys and counselors-at-law. The statute, however, gives no lien to others than attorneys or counselors. (Section 66, Code Civ. Pro.)

The corporation, under its charter, had no power to act as an attorney or counselor-at-law. The practice of the legal profession is provided for by law and can only be exercised by a natural person who must have a license.

Any contract whereby a corporation undertakes to intervene and to control the relationship between an attorney or counselor and his client, should be prohibited as contrary to public policy. The enterprise which would furnish a sort of "slot machine" lawyer tends directly to evasions of the law and the destruction of all the ethics and traditions of the legal profession.

In the present instance, the practice would prevent accomplishment of the purpose of the statute which seeks, wherever possible, a direct settlement between the State and the land owner, without unnecessary expense to either.

Under the circumstances, I advise you to ignore both these notices of lien and all others of similar character.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

General Tax Law — Bonds.

Whether bonds which are the property of an insurance or trust company or savings bank, registered in the name of a State officer, and bonds the property of a trust company and held in the name of one of its officers as trustees, are entitled to credit under Chapter 550, Laws of 1907.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 23, 1907.

Hon. MARTIN H. GLYNN, *State Comptroller, Albany N. Y.:*

Dear Sir.— Replying to your favor of the 12th and 30th ultimo, and asking whether or not bonds registered in the name of and in the hands of a State officer, the property of an insurance or trust company or savings bank, and bonds the property of a trust company held in the name of one of its officers as trustee, are entitled to credit under Chapter 550 of the Laws of 1907, would say that the provisions of Chapter 550 of the Laws of 1907 are in the nature of an exemption from taxation and should be construed strictly and therefore corporations claiming the benefit of the act must come within all its provisions.

This law requires that the bonds shall be “owned, held by and registered in the name of the company, corporation or association” claiming the benefit of the act. Where, therefore, the bonds are registered not in the name of the company, but in the name of some public officer, or some person as trustee for the company, such a case is not within the statute and does not entitle a corporation, company or association having the bond so registered to the credit provided in said act.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Highway Law, Section 53 — Tax Law, Sections 55 and 173.

Apportionment of State aid by Comptroller to be based upon
Equalization table of 1907.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, December 18, 1907.

HON. MARTIN H. GLYNN, *State Comptroller, Albany, N. Y.:*

Dear Sir.— Your favor of the 12th instant is received, calling attention to Section 53 of the Highway Law, as amended by Chapter 716 of the Laws of 1907, which provides for the payment of State aid to towns having the money system for the working of highways on the basis of the assessed valuation of each town, and particularly to that portion thereof which provides:

“The assessed values of real property to be used in determining the amounts to be paid to towns under this section shall be the value as equalized by the several boards of supervisors for county purposes, to which shall be added or from which shall be deducted the percentage of value, if any, added or deducted by the state board of equalization to equalize between counties for state purposes.”

You call attention to the fact that under Section 173 of the Tax Law, the State Board of Equalization meets on the first Tuesday of September in each year and acts upon assessed valuations of the preceding year; and you ask whether the Comptroller may apportion the State aid in accordance with Section 53 of the Highway Law for the current year upon the equalization table of 1907.

In view of the provisions of Sections 173 and 55 of Tax Law, whereby it appears that the State tax levied on each county is based upon an equalization table, determined as above stated, I see no reason why the same course should not be pursued with reference to the apportionment of State aid to towns under the section in question.

I am, therefore, of the opinion that the Comptroller may properly base his action for the current year on the equalization table adopted by the State Board in September 1907.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Tax Law — Public Officers Law.

Bonds of recording officers, county treasurers and the chamberlain of the city of New York. Power of Comptroller to cancel official undertaking and accept new.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, December 23, 1907.

Hon. MARTIN H. GLYNN, *State Comptroller, Albany, N. Y.:*

Dear Sir.—I beg to acknowledge your letter of the 19th inst. asking the opinion of this office as to the power of the Comptroller to cancel an official undertaking and accept a new one in lieu thereof in the event that the Comptroller becomes satisfied that the sureties on the first undertaking are insufficient, the specific bond in question being given under the provision of section 300 of the Tax Law. That section provides as follows:

“All recording officers and county treasurers and the chamberlain of the city of New York shall furnish such bond conditioned for the faithful and diligent discharge of the duties required of them respectively by this article to the people of the State within such time, with such sureties, and in such penal amount not exceeding \$25,000, as the State Comptroller may prescribe.”

In connection with this section it is necessary to examine the provisions of sections 11 and 12 of the Public Officers Law, which so far as material are as follows:

"Section 11. Every official undertaking, when required by, or in pursuance of law, to be hereafter executed or filed by any officer, shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such officer in accordance with law or in default thereof, that the parties executing such undertaking will pay all damages, costs or expense resulting from such default not exceeding a sum, if any, specified in such undertaking. The undertaking of a State officer shall be approved by the Comptroller both as to its form and as to the sufficiency of the sureties and be filed in the Comptroller's office.

"Section 12. * * * If a public officer, required to give an official undertaking enters upon the discharge of any of his official duties before giving such undertaking, the sureties upon his undertaking subsequently given, for or during his official term shall be liable for all his acts and defaults done or suffered and for all moneys and property received during such term prior to the execution of such undertaking or if a new undertaking is given, from the time notice to give such new undertaking is served upon him. Every official undertaking shall be obligatory and in force so long as the officer shall continue to act as such and until his successor shall be appointed and duly qualified and until the conditions of the undertaking shall have been fully performed. When an official undertaking is renewed, pursuant to law, the sureties upon the former undertaking shall not be liable for any official act done or money received after the due execution, approval and filing of the new undertaking."

The Comptroller is given general superintendence over the fiscal concerns of the State. The duty is imposed upon him by statute to approve an official bond and pass upon the sufficiency of the surety thereon. It seems to me that this carries with it the implied power to require a new bond whenever in his judgment the sufficiency of the sureties is impaired.

While section 12 of the Public Officers Law, as above quoted, provides that an official undertaking shall continue in force so

long as the officer shall continue to act as such, the sentence immediately preceding and following that provision, certainly contemplate the giving of new undertakings to supersede the ones originally given.

In the case of the *People v. Cushing*, 36 Hun, 483, which was a case involving a bond given by a bank as depository of canal funds, the court expressed a doubt as to whether the Canal Board could release such a bond without express statutory authority, but did not pass upon the question.

In my opinion, the Comptroller has the power to require the filing of a new bond by the officers mentioned in section 300 of General Tax Law, whenever he believes such new bond desirable to protect the interest of the public, and on filing of such new bond he can give a release of the prior bond to correspond with the provisions of section 12 of the Public Officers Law to the effect that "the sureties upon the former undertaking shall not be liable for any official act done or moneys received after the due execution and approval and filing of the new undertaking."

Respectfully,

WILLIAM S. JACKSON,
Attorney-General.

OPINIONS RENDERED THE STATE ENGINEER AND SURVEYOR.

Highway Law — Money System.

Poll tax, enforcement payment of, by town collector under section 65.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *January 11, 1907.*

HON. FREDERICK SKENE, *State Engineer and Surveyor, Albany, N. Y.:*

Dear Sir.— I am in receipt of your favor of the 8th inst. inclosing the inquiry of Harry Pease, Esq., as to whether a town collector is under the duty of first demanding of a taxpayer that he pay his poll tax and that he endeavor to find personal property on which to levy, and if found, to sell the same as a condition precedent to the bringing of an action by a highway commissioner for the recovery of the penalty provided by law for non-payment of a poll tax.

A poll tax is provided for by subdivision 2 of section 33 of the Highway Law as a labor assessment. Section 53 of the Highway Law provides that in towns voting in favor of the money system the boards of supervisors are directed to levy a tax of one dollar on each person liable to poll tax. The same section provides that the taxes to be levied and raised should be levied and collected the same as other town taxes.

Section 65 of the Highway Law provides as follows:

“In those towns in which a money system of taxation has been adopted, any person who is taxed a poll tax for highway purposes as provided in section 53 of this chapter and who does not pay such tax in the manner and at the time prescribed by law shall be liable to a penalty of five dollars.”

Section 56 of the Tax Law provides in substance that on or before December 15th in each year, the board of supervisors shall annex to the roll a warrant under the seal of the county, signed by the chairman and clerk, commanding the tax collector of each district to collect from the several persons named the several sums set opposite their names, and to pay over the sum so collected on or before the first day of the following February.

It would appear from that provision that a poll tax appearing upon the roll would become legally due at the time of the delivery of the roll to the collector, and that the person assessed would be in default unless he paid such tax prior to the first day of the following February.

Section 65 of the Highway Law contains the following clause:

“ The penalties herein provided may be recovered by action by the overseers of highways as such or by the highway commissioner in those towns having no such overseers, and when collected shall be expended and disposed of by the overseer or commissioner in the same manner as commutation moneys.”

If the collector has posted the notices required by law to be posted by him on receipt of the tax roll, it would seem that no other step need be taken to entitle the overseer or commissioner to bring suit for the penalty provided by that section.

The provisions of section 71 of the Tax Law for a levy upon or sale of personal property for the enforcement of taxes generally, and the provisions of section 70-a, that neglect or refusal to pay any tax, shall not be punishable as a contempt or as misconduct, and that no fine shall be imposed for such nonpayment, are inconsistent with the provisions of section 65 of the Highway Law if they are taken as applying to a poll tax.

The conclusion of this Department is, therefore, that the provisions of section 70-a and 71 as referred to do not apply to the enforcement of a poll tax, and that the remedy of an action to recover the penalty provided for by section 65 of the Highway Law is the direct and exclusive provision for the enforcement of the poll tax.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General.

Executive Law — Public Officers Law.

Authority of State Engineer and Surveyor to appoint additional
Division Engineers and Clerks.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *January 30, 1907.*

HON. FREDERICK SKENE, *State Engineer and Surveyor, Albany,
N. Y.:*

Dear Sir.—You have asked this office as to what, if any, authority of law there is for the creation of the office of three division engineers and three additional financial clerks in your office, and for appointments thereto by you.

Section 62 of the Executive Law, at subdivision 5, provides, in substance, that the State Engineer shall appoint and fix the compensation of such engineers and assistants as may be necessary to execute such duties as shall be confided to them by statute.

The Public Officers Law, section 9, provides in substance, that every deputy, assistant or other subordinate officer whose appointment or election is not otherwise provided for, shall be appointed by his principal officer, and that the number thereof, if not otherwise prescribed by law, shall be limited in the discretion of the appointing power.

In view of the additional duties devolved on your office by the so-called Barge Canal and Good Roads Laws, and other legislation, and under the provisions of the sections above quoted, your right to create and appoint to said offices seems clear.

Respectfully yours,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law.

Method of procedure to take forcible possession of lands appropriated.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, N. Y., *March 8, 1907.*

HON. FREDERICK SKENE, *State Engineer and Surveyor, Albany, N. Y.:*

Dear Sir.— Under date of the 4th inst. you request my opinion as to how you should proceed to take possession, forcibly if necessary, of lands appropriated for the barge canal. You state that the proper notices have been served.

In taking possession of the lands referred to, you may employ such assistants as you may deem necessary to enter upon and take possession of the land including the removal therefrom, if necessary, of all persons found thereon. Such reasonable force, in the carrying out of your instructions, as may be necessary, may be resorted to.

If you anticipate forcible resistance which your employees do not feel able to cope with, it will be proper for you to lay information before the sheriff of the county in which the lands are situated and request his official protection and support in the performance of your duty.

In the case stated in your letter, your duty is to proceed and take possession of the lands needed by the State.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Barge Canal Law — Bridges.

Erection at Herkimer of guard-gate, etc. Whether State Engineer should build bridge for Utica & Mohawk Valley Railway Co.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 1, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your letter of recent date, in which you state that “at Herkimer, N. Y., at a point where the new Barge Canal will follow a new location a guard-gate is to be built between and immediately adjacent to the existing public highway and the existing tracks of the Utica & Mohawk Valley Railway Co.”, and that “it is very desirable that the masonry for the three substructures should be designed by your department and built at the same time, under the same contract;” and in which you ask:

1. Whether the State is under obligation to build a bridge for the Utica & Mohawk Valley Railway Co., at that point;
2. If the State is so obligated, is it required by law that the State prepare the plans and build the new bridge by contract, or must the same procedure be followed as was adopted for the settlement between the State and the D. & H. Co., for the construction of a double-track railway bridge across the Barge Canal at Waterford, N. Y.

From your letter and the blue print accompanying it, showing the location of the proposed structures, it appears that the new Barge Canal crosses a public highway, also a strip of land adjoining the highway on the east, where a guard or stopgate is to be built, and also the right of way of the Utica & Mohawk Valley Railway Co., adjoining said strip of land on the east; that it will be necessary to construct a bridge to carry the highway over the new Barge Canal and that it will also be necessary to construct a bridge to carry the tracks of the Utica & Mohawk Valley Railway Co., across the canal; that in the space between the railroad and the highway it is intended to build a guard or

stop-gate; that foundations or substructures will have to be built for both of the contemplated bridges and for the guard or stop-gate, and that on account of the proposed location of these three structures you desire, and consider it the better plan, to build these substructures together, making them one piece of work as indicated on the blue print.

I assume that the Utica & Mohawk Valley Railway Co., is the owner of the lands upon which its railroad is constructed at this point, and that such of its lands as are required for the construction of the new Barge Canal have been duly appropriated by the State Engineer and the Superintendent of Public Works, in the manner prescribed by section 4 of chapter 147 of the Laws of 1903, known as the Barge Canal Act.

Under this act the State Engineer is authorized to take all lands, waters and structures, which, in his judgment, are necessary for the construction of the enlarged canal. Upon making a map, survey and certificate, as required by said section 4, by the State Engineer and filing the same in his office, and a duplicate thereof, duly certified, in the office of the Superintendent of Public Works, and upon the service by the Superintendent of Public Works, of a notice of such filing and the date thereof upon the owner of any real property appropriated, with a description of such property, the taking and appropriation of such lands is complete. The only other thing required by the State is to make compensation to the owner for the lands so appropriated. With the making of such compensation the State Engineer has nothing to do.

The Board of Special Examiners and Appraisers, appointed by virtue of chapter 335 of the Laws of 1904, is authorized to agree and determine with the owners of land appropriated, upon the fair valuation of any specific portion of real property, structures, waters or property, or rights connected therewith, and may agree upon a price to be paid therefor by the State in full compensation for such specific property or rights, or for the damage caused by the Barge Canal work or improvement, subject to the approval of the Canal Board.

If the Board of Canal Appraisers cannot agree with the owners upon the compensation to be paid, then such compensation must be determined by the Court of Claims.

In arriving at the amount of compensation to be paid, the Board of Canal Appraisers, with the approval of the Canal Board, has a right to consider the value of the property taken, and also the value of all rights connected therewith, that is to say, damages, if any, for rights interfered with by reason of the appropriation of specific property.

In this particular case the construction of the Barge Canal will cut in two the right of way of the Utica & Mohawk Valley Railway Co., and of course, interrupt the operation of the railroad, unless it is carried over the canal. To continue the usefulness of the railroad and to restore it substantially to its former condition it will be necessary to construct a bridge to carry the tracks over the canal, and the actual expenses of such restoration would be a proper item to include in the compensation to be made to the railway company.

The lands of the railway company having been appropriated the construction of a bridge across the new Barge canal can only be done with the consent of the Superintendent of Public Works and the approval by him of the plans for such bridge.

The Barge Canal Act provides that all the work therein authorized shall be done by contract. The work that can be done by the State is only such as is therein mentioned, and I am of the opinion that the act does not authorize the building of a new bridge by the State for the Utica & Mohawk Valley Ry. Co., or the preparation of the plans therefor.

However desirable it may be that the highway and railroad bridges and the stop-gate should be built according to a uniform plan as suggested by you, I do not see how it can be done, unless an agreement is made by the Board of Special Examiners and Appraisers with the railway company for the compensation to be paid; for unless such agreement is made as already stated, the amount of damages or compensation to be paid the railway company will have to be determined by the Court of Claims. If, however, the Board of Special Examiners and Appraisers, with the approval of the Canal Board, are able to enter into an agreement with the railway company, the entire question of the amount of compensation to be paid, the manner of crossing the new Barge canal by the railway company, and the consent so to do, and the

plans for making such crossing and constructing a bridge, may all be properly provided for in such agreement and all the work mentioned by you thus be virtually done in accordance with the plans of your Department and under its direction and control.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law.

Continued occupancy and use of lands appropriated by State.
Payment of interest, etc., from time State took land.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *July 2, 1907.*

HON. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—Replying to your request for the opinion of this Department in relation to the use of and payment of interest on the compensation agreed to be paid for lands appropriated for the new Barge canal, viz:

1. Has the contractor a right to allow former owners to use and occupy appropriated land until such time as the contractor is ready to use it for construction work?

It is to be presumed that appropriations of land pursuant to chapter 147 of the Laws of 1903 will not be made until the lands are needed for the prosecution of the improvement of the canals under that act. Until an appropriated parcel of land is occupied by the contractor in the prosecution of the work of the improvement under the terms of his contract, the State, through the State Engineer and Surveyor, is in possession thereof. The contractor is in possession only to the extent and so long as the prosecution of his work requires. He has no authority, therefore, over former owners, or other persons, whereby he may allow them to continue in possession or occupy the lands under rentals payable to himself or under any other condition imposed by him,

unless there is a provision in the contract allowing him so to do, or unless the State has sold to him the buildings, if any, thereon.

The State Engineer and Surveyor, however, is no doubt justified in exercising a sound discretion in permitting former owners to continue for a reasonable time in possession of such parts of particular parcels appropriated as would not interfere with the State's interest, since the lands are taken from former owners against their will and oftentimes when great inconvenience would be visited upon them, if the right of the State to dispossess summarily should be exercised.

2. If the State appropriates a portion of a man's pasture and notifies the owner of that fact and notwithstanding such notice the former owner continues to use his (remaining) pasture by allowing cattle to graze thereon, is the owner obliged to build a fence between the appropriated land and his remaining land not appropriated in order that the payment of interest to him on the amount to which he is entitled on account of the appropriation shall begin from the time when the State took the land?

Section 4 of chapter 147 of the Laws of 1903, as amended by chapter 365 of the Laws of 1906, provides as follows:

“ * * * From the time of service of such notice the entry upon and the appropriation by the state of real property therein described for the purposes of the work and improvement provided for by this act, shall be deemed complete, and such notice as served shall be conclusive evidence of such entry and appropriation and of the quantity and boundaries of the lands appropriated * * *. If the settlement for the lands taken is made by the appraisers appointed to represent the State in and by chapter 335 of the Laws of 1904, the persons whose property has been taken and who have agreed upon the compensation to be paid therefor, shall be entitled to interest from the time of the actual occupancy thereof by the state * * *.”

The time from which interest runs in favor of an owner of lands appropriated is governed by the foregoing provisions and begins from the time of the actual occupancy thereof by the

State; and the circumstances that the former owner continues, after he is served with notice of appropriation, to use the lands appropriated or omits to fence in his remaining lands, is not material to affect the running of interest in his favor.

Yours truly,
WILLIAM S. JACKSON,
Attorney-General.

Highways.

Canandaigua-Victor road. Right of highway commissioners to remove poles.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *July 2, 1907.*

Hon. FREDERICK SKENE, *State Engineer and Surveyor, Albany, N. Y.:*

Dear Sir.—Replying to your request for my opinion concerning the removal of poles in the Canandaigua-Victor Road in the county of Ontario, I will say that I coincide with the views expressed in an opinion on this subject rendered by Attorney-General Cunneen on September 8, 1904, to which your attention has been called. If the poles mentioned in your letter are in such portions of the highway as are needed for highway purposes, the highway commissioners may direct their removal by proper written notice served upon the owners. If such direction be disregarded, the highway commissioners may summarily cause the poles to be removed.

Yours truly,
WILLIAM S. JACKSON,
Attorney-General.

Highways.

Boundary lines, method of procedure to establish.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *July 2, 1907.*

HON. FREDERICK SKENE, *State Engineer and Surveyor, Albany, N. Y.:*

Dear Sir.—Your communication of May 19th at hand, in which you ask if I coincide with an opinion rendered by the Attorney-General under date of November 27, 1905, Attorney-General's opinions, page 306, in relation to the mode of procedure which your department should adopt in establishing boundary lines for roads to be improved by State aid.

I have examined such opinion and I think it correctly states the general principles with reference to the boundaries of highways.

Yours truly,

WILLIAM S. JACKSON,

*Attorney-General.**Barge Canal Law.*

Contract No. 2, for construction of Barge Canal at Waterford.

Retaining walls and areaways outside of lands appropriated cannot be built by the State.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *July 19, 1907.*

W. R. HILL, Esq., *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I have your favor of July 6, 1907, in which you state that

“The original plans for Contract No. 2 for the construction of the barge canal at Waterford, New York. provide

for certain retaining walls for holding the earth embankments on the bridge approaches, and for building certain stairways, so that pedestrians can reach the crosswalk on the bridge over the barge canal at the canal crossing at Fourth street.

“It is suggested by citizens of Waterford owning property in the vicinity of this bridge that instead of building stairways and retaining walls as shown on this plan, the plan and contract be modified so as to provide for the elimination of the stairways, broaden out the approaches of the bridge and place the sidewalks on an earth embankment. This will necessitate the filling in of a narrow strip of State land running along the northwest bank of the proposed canal, and also the filling in of the property of Anthony Roberts, and the building of low walls in front of the windows of Anthony Roberts, Mrs. Eliza Tracey and Thomas Gaynor.”

You ask my opinion as to whether or not the State can build small retaining walls to form arcaways in front of the windows of the property of the above-mentioned persons and whether if, by making the proposed alterations in said Contract No. 2, the State would be liable to pay damages to the owners of the abutting property on Fourth and South streets by reason of the alteration and change in the grades of those streets in front of their property, as indicated on the blue print and photographs accompanying your letter.

The question asked by you, while relating only to the change of plan for the building of the bridge at Waterford, are of so great importance and are liable to be raised with reference to the rebuilding of all fixed bridges, and the approaches thereto, along the entire length of the canals under process of improvement pursuant to chapter 147 of the Laws of 1903, that I have given a very careful and exhaustive examination of the statutes and decisions of the courts relating thereto, in order that a correct conclusion might be arrived at for the guidance of the State Engineer and other officers charged with the duty of making

such canal improvements in this case and those of a similar character which may hereafter arise.

A careful examination of the statutes under which the Erie, Champlain and other canals of the State were constructed reveals the fact that in the early general statutes no specific provision was made for the construction of bridges across such canals. The Canal Commission undoubtedly had the general power to construct such bridges. Section 3 of chapter 162 of the Laws of 1817, entitled "An act respecting navigable communications between the Great Western and Northern Lakes and the Atlantic Ocean" authorized and empowered the Canal Commissioners, their superintendents, agents, engineers, etc., to enter upon, take possession of and use all and singular any lands, waters and streams necessary for the prosecution of the improvements intended by this act, to make all such canals, feeders, dikes, locks, dams and other works and devices as they think proper for making said improvements, doing, nevertheless, no unnecessary damage." Provision was also made by this section for making compensation to the owners, proprietors or parties interested in any lands, waters or streams taken or appropriated for the purpose of constructing such canals. It further appears that for many years the Canal Commissioners were directed to construct bridges in many cases across canals by special acts of the Legislature.

By chapter 202 of the Laws of 1820, section 1, it was provided that "In all cases when a new road or public highway is laid out by legal authority in such direction as to cross the line of the Erie canal, Champlain canal or the Salina Side Out, after said line is established, in such manner as to require the erection of a new bridge over either of the said canals for the accommodation of said road, such bridge shall be so constructed and forever maintained at the expense of the town in which said bridge is to be situated."

In 1839 it was provided by chapter 207, section 1, of the Laws of that year that "The Canal Commissioners are hereby authorized and required to construct and hereafter maintain at the public expense, road and street bridges over the enlarged Erie canal in all places where such bridges have been heretofore

constructed, whether the same have been heretofore maintained at the expense of the State or of the towns, cities or villages where they are situated.

By chapter 332 of the Laws of 1854, section 9, it was provided that "Hereafter no street or road bridges shall be constructed by the Canal Commissioners over any canal of this State except upon such street or roads as were laid out, worked and used previous to the construction of the canal by which such streets or roads were obstructed."

The foregoing are substantially the provisions relating to the construction of bridges made down to the time of the last quoted act, and which were in substance incorporated into the provisions of the Revised Statutes and have been continued, with certain modifications, until the present time.

By section 4 of article 1, title IX, chapter 9, part 1, of the Revised Statutes it was provided that "A complete manuscript map and field notes of every canal that now is or hereafter shall be completed, and of all the lands belonging to the State adjacent thereto or connected therewith, shall be made, on which the boundary of every parcel of such lands to which the State shall have a separate title shall be designated and the names of the former owners and the date of each title be entered." By section 5 of said title it was provided "Every such map shall be compiled by the Canal Commissioners, who shall for that purpose cause the necessary surveys to be made; when prepared, it shall be submitted to the Canal Board for its approbation, and when so approved, shall be signed by the Canal Commissioners, be certified by them as correct and filed in the office of the Comptroller."

By chapter 451, section 6, of the Laws of 1837, it was provided: "And such maps of such canals as shall hereafter be made, completed, approved, signed, certified and filed under and by virtue of the act referred to (the above quoted act) are hereby declared to be presumptive evidence that the lands indicated on such maps as belonging to the State have been taken and appropriated by the State as and for the canals."

While I have not before me data showing that the above quoted provisions of the Revised Statutes were complied with by the

Canal Commissioners, the presumption is that the surveys and maps required to be made and filed as therein provided were so made and filed, and that "all the lands belonging to the State" adjacent to the canals and connected therewith were laid down upon such maps. This presumption is supported by the decisions of the Court of Appeals in the case of Carpenter against the city of Cohoes, reported in 81 New York at page 21, in which a State map showing the lines of the State lands was admitted in evidence for the purpose of showing the title of the State in the approaches to a certain bridge across the canal in the city of Cohoes, and in which case the court held and decided that the approaches to such bridge were part of the public works of the State connected with the Erie canal and were owned by the State; and also in the case of Veeder against the Village of Little Falls, reported in 100 New York, page 343, in which the court held that the blue line indicated the boundary of such land, and in which the above decision of Carpenter against the city of Cohoes was distinctly approved. In accordance with the presumption that the Canal Commissioners have caused surveys and maps of the canals of the State and of the lands adjacent thereto and connected therewith to be filed as required by law and in accordance with the above cited cases, in my opinion it follows that the lands acquired by the State for the Erie, Champlain and other canals and all the lands adjacent thereto or connected therewith, as laid down upon such maps and included within the blue line, are owned by the State, and that the State in the work of improving such canals has the right to enter upon the same and to erect such structures thereon as may be necessary to carry out such improvement.

Chapter 147 of the Laws of 1903, section 3, provides that "New bridges shall be built over the canals to take the place of existing bridges wherever required or rendered necessary by the new location of the canals." The manner of building such bridges is not specified, except that fixed and lift bridges shall not be less than fifteen and a half feet above the water at its highest ordinary stage. The building of such bridges and the approaches thereto is, therefore, left to the discretion of the State Engineer and the Canal Board.

The Attorney-General in an opinion to the State Engineer on June 1, 1905, decided that the State Engineer and Surveyor has no authority to go outside of lands appropriated for canal purposes to make any changes in the grade nor for any other purpose. I fully concur in this opinion.

The State Engineer is clothed with very ample power to take and appropriate any and all lands and property which in his judgment may be necessary for the use of the improved canals and for the purposes of the work and improvements authorized by the Act of 1903. The method of appropriation is simple and easy, and there is no reason why such appropriation should not be made in the manner prescribed by the statute whenever the State Engineer deems it necessary, and there is no reason why the officers of the State should enter upon lands and premises not appropriated except for the purpose of doing necessary preliminary work or making the necessary surveys.

As hereinbefore stated, the State undoubtedly owns the property included within the approaches of bridges heretofore erected across the State canals and which it undoubtedly acquired by due process of law, and if such property is not adequate to meet the requirements of approaches to the bridges to be rebuilt over the improved canals, the State Engineer has full power to appropriate such additional property as may be necessary for that purpose. The State Engineer or other officials of the State, if they go outside of the lands now belonging to the State or duly appropriated by it under the provisions of the act of 1903 and make permanent improvements or erect permanent structures upon lands not so owned or appropriated, would be trespassers. In the case of *Litchfield against Bond*, decided in October, 1906, and reported in 186 New York at page 66, the defendant, the State Engineer, was held personally liable for entering upon and appropriating certain lands of the plaintiff in making a certain survey of a boundary line in the county of Franklin, pursuant to authority conferred upon him by the Legislature. In making this survey, while the State Engineer employed the method "best adapted to the performance of the work" of locating, establishing and permanently marking upon the ground such boundary line, he appropriated a strip of land three and one-fourth

miles in length and several feet wide, felled trees thereon and otherwise damaged the property, and the court held that such act was unauthorized by the statute and that the State Engineer was a trespasser and liable for the damages thereby; that no authority had been given by the statute under which he was proceeding, to take or appropriate property; that this act was not the act of the State but his individual act.

In taking the fee of a street or highway by the State, a municipality or other authority, compensation must be made therefor. Where the fee of a street is in the abutting owner, such compensation must be made as the owner shows himself to be entitled to. Where the fee of a street is not in the abutting owner, ordinarily only nominal damages must be paid, but there is no absolute fixed rule to govern the amount to be paid to the abutting owner for the fee of a street or highway taken by the State or other authority, whether the fee is or is not in the abutting owner, but is dependant upon the facts in each case.

In the building of new bridges over the canals to take the place of existing bridges, the State Engineer and the Canal Board should proceed with extreme caution. The precise limits of the property included within the approaches to all existing bridges, and which presumably are owned by the State, should be ascertained, and if in the judgment of the State Engineer such property will not be sufficient, property therefor should be appropriated by the State Engineer in the manner provided by the statute. To follow any other course or to enter upon any other lands, including highways and streets not duly appropriated, and to make permanent improvements or to build permanent structures thereon, is unauthorized and can only result in creating claims for damage against the State.

In this specific case I am of the opinion that the State cannot build retaining walls and arcaways on Fourth and South streets in the village of Waterford or alter the grades of those streets in the manner shown upon the plan submitted by you, such proposed work being outside the lines of the property owned or appropriated by the State at that point.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

State Forest Preserve — Adirondack Park.

Proposed highways in Hamilton and Herkimer counties through State lands, cannot lawfully be constructed.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 25, 1907.

HON. FREDERICK SKENE, *State Engineer and Surveyor, Albany, N. Y.*:

Dear Sir.—I am in receipt of your favor of the 16th inst. requesting my opinion as to what procedure should be adopted in relation to the acquisition of the right of way for the improvement of certain highways in Hamilton and Herkimer counties, some portions of which will extend through lands now owned by the State within the limits of the forest preserves. In your letter of the 22d inst., supplementing your letter of the 16th inst., you say that "Last season surveys were made by this department for the proposed State highway commencing at the Hamilton county line near Eagle Bay, north of Fourth Lake, running thence in a general easterly direction south of Seventh Lake, Raquette Lake, Blue Mountain Lake; thence in a northerly direction to Long Lake village; thence in an easterly direction through the village of Newcomb, and thence in a general easterly and southerly direction to the Essex-Warren county line, near the village of Olmsteadville.

"Our proposed improved road follows in general existing highways from Eagle Bay about two miles easterly, and also from Long Lake village to the Essex-Warren county line and for a portion of the distance between Blue Mountain Lake and Long Lake village. For the remainder of the distance our road runs through land upon which no highway exists at the present time. On this latter portion of the road we cross State land for considerable distances, often several miles in extent, and on all portions of the road which follow in general existing highways we frequently deviate from the same for distances of varying lengths and also require parcels of land in various places for widening the present highway.

"The preparing of plans for each parcel of additional right of way required involves a great deal of labor and time, especially in roads of this nature where we require additional parcels of land for a large part of the distance.

"The question arises whether it will be necessary for this department to prepare plans and descriptions of each individual parcel of State lands required for highway purposes and what steps should be taken by this department in regard to this right of way before placing these roads under contract.

"While the road described above is the only one within the limits of the Adirondack Park for which surveys have actually been made and which crosses State lands, we intend to make various other surveys in this region in the future and the same situation will undoubtedly arise in other portions of the proposed Adirondack Park, and therefore if it is possible for you at this time to outline a course of procedure which would also govern our actions in similar cases as may arise, it would simplify matters somewhat for this department."

You do not state the length or width of the proposed road, or how great a distance it "runs through land upon which no highway exists at the present time" except that "we cross State land for considerable distances, often several miles in extent." An inspection of the "Map of the Adirondack Forest and Adjoining Territory" compiled by the Forest, Fish and Game Commission shows, however, that the proposed road is upward of sixty miles long and for more than half the distance runs through the forest preserve, and will, if constructed, require the taking of a large part of State forest lands and the destruction of a large quantity of timber thereon.

In 1898 the Legislature of the State passed an act, chapter 115, entitled "An act to provide for the improvement of the public highways," which made provision for the improvement of existing highways and for the payment of part of the expense thereof by the State. This act, as amended to the present time, points out the procedure to be followed in making such improvement. Section 1 provides that

"The board of supervisors in any county of the State may, and upon presentation of a petition as provided in section

two hereof, *must* pass a resolution that public interest demands the improvement of any *public highway* or section thereof situated within such county and described in such resolution, but such description shall not include any portion of a highway within the boundaries of any city or incorporated village except that portion of the cities of Rome and Oneida lying outside of the respective corporation tax districts of said cities and except as provided in section fourteen of this act, and within ten days after the passage of such a resolution shall transmit a copy thereof to the State Engineer and surveyor."

Section 2 provides that

"The owner of a majority of the lineal feet *fronting* on any such *public highway* or section thereof in any county of the State may present to the board of supervisors of such county a petition setting forth that the petitioners are such owners and that they desire that such highway or section thereof be improved under the provisions of this act."

Section 3 provides that

"Such state engineer after receipt of such resolution shall *examine* the *highway* or *section thereof* sought to be *improved* and determine whether it is of sufficient public importance to come within the purpose of this act, whether it will become part of a properly developed system of *improved market roads*, and whether the *improvement* thereof will provide for an equitable apportionment of improved highways among the counties, taking into account the use, location and value of such highway or section thereof for the purpose of common traffic and travel, and after such investigation shall certify his approval or disapproval of such resolution. If he shall disapprove such resolution he shall certify his reason therefor to such board of supervisors."

Section 4 provides that:

"If he shall approve such resolution, such state engineer shall cause the highway or section thereof therein described

to be mapped both in outline and profile. He shall indicate how much of such highway or section thereof may be improved by *deviation* from the *existing lines* wherever it shall be deemed of advantage to obtain a shorter or more direct road without lessening its usefulness, or wherever such deviation is of advantage by reason of lessened gradients. And if the boundaries of the proposed *improved* highway shall *deviate* from the *existing* highway the board of supervisors must make provisions for securing the requisite right of way as provided by law and the cost and expenses of procuring such right of way shall be taken into consideration and paid for by the Comptroller as a part of the cost of such improvement."

Provision for securing the requisite right of way where the boundaries of the proposed highway deviate from the existing highway, was made by chapter 240 of the Laws of 1901, entitled "An act supplementary to chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, entitled "An act to provide for the improvement of public highways," relative to securing the requisite right of way by the boards of supervisors of counties in which public highways are improved pursuant to said chapter." This act provides that "where the boundaries of any *proposed* highway shall deviate from any existing highway or where land is required for the purpose of obtaining gravel, stone or other materials, for the construction or maintenance of such highways or required for spoil banks the board of supervisors may acquire such lands together with the right of way to any bed, pit, quarry, spoil bank or other place by purchase or condemnation proceedings in the manner therein prescribed." Provision is made by the act for payment of the value of the lands acquired, either by purchase or condemnation, by the county, and the title to all lands so acquired "shall vest in said county for the purpose of a highway forever."

Section 9 was added to chapter 240 of the Laws of 1901, by chapter 510 of the Laws of 1902, and provides that:

"Any lands acquired by purchase or condemnation, pursuant to the provisions of the act hereby amended, for the

purpose of obtaining gravel, stone or other materials, for the construction of highways, improved or constructed as provided in said chapter * * * or required for spoil banks, may be sold or leased by the board of supervisors of any county when no longer needed for any of such purposes."

Section 14 of chapter 115, Laws of 1898, as amended, provides:

"Whenever any county *has had* aid in building any such highway, and it seems advantageous to such state engineer that a section or sections of *highway, not exceeding one mile in length*, should be *constructed* under this act to connect *these* roads together, and would be of great public utility and general convenience, he may serve notice on the board of supervisors of such county, and shall file one in the county clerk's office, designating the *highways already constructed* and the existing termini, and the section or sections, in his opinion, necessary to be constructed and his reasons therefor. And it shall be the duty of the board of supervisors to provide for the construction of such *connecting* highway or section thereof, and within one year after the service and filing of such notice under this section. Whenever any such connecting highway through an incorporated village shall likewise be deemed advantageous by the state engineer, *he may construct* the same and the *expense* therefor *shall be paid* for as provided in section nine."

The foregoing provisions embody the procedure to be followed in improving the highways of the State and may be briefly summarized as follows:

1. The board of supervisors of any county,
 - a. May upon its own initiative,
 - b. Upon the petition of the owners of a majority of the lineal feet fronting on any public highway that they desire such highway or a section thereof to be improved, must adopt a resolution that public interest demands the improvement, and within ten days after its passage, transmit a certified copy thereof to the State Engineer and Surveyor.

2. After receipt of such resolution, the State Engineer must *examine* the highway or section thereof sought to be improved; *determine* whether it is of sufficient importance to justify its improvement; *determine* whether it will become part of a properly developed system of improved market roads.

3. After such investigation and determination he shall approve or disapprove said resolution.

4. If he shall approve such resolution he shall cause said highway or section to be mapped both in outline and profile.

5. He shall indicate how much of such highway may be improved by deviation from existing lines.

6. The board of supervisors must by purchase or otherwise acquire all lands for the right of way of said improved highway received by the widening of or deviation from the lines of the existing highway.

7. Such right of way must be so acquired prior to the actual commencement of the work of improvement.

8. The *board of supervisors* must provide for the construction of a connecting road not exceeding one mile in length to connect improved highways already constructed, upon the engineer certifying to them that such connecting road would be advantageous and of great public utility and general convenience.

9. The *State Engineer* may construct a connecting highway through an incorporated village not exceeding one mile in length to connect improved highways, already constructed, the expense thereof to be paid for as provided in section nine.

The highways to which the above mentioned acts are applicable and which can be improved thereunder, pursuant to a resolution of the board of supervisors of any county, are only existing highways of such county, and the State Engineer is only authorized to examine, survey, map, or make plans and specifications for the improvement of such highways. In the improvement of such existing highways as boards of supervisors are authorized to have improved, the State Engineer is authorized to deviate from the established lines thereof only to the extent of obtaining a shorter or more direct road without lessening its usefulness or where such deviation is of advantage by reason of lessened gradients. Such deviations from existing lines can be made only where necessary,

and in order to bring about a substantial improvement of the highway and which may be said to be incidents of or necessary to the work of improvement. The statute does not contemplate or authorize the abandonment of existing and the locating and constructing of new highways. Its clear intent and purpose is to continue existing highways with only such incidental change of location in some places as will be advantageous and beneficial. It is, as its title declares, for the improvement not for the establishment of highways. There are other provisions of law for the laying out of new highways, and recourse must be had to the methods thereby prescribed in establishing new roads.

The road described by you certainly does not come within the purview of chapter 115 of the Laws of 1898, as amended. There is no highway over the greater part of the course described to be improved. You say "for the remainder of the distance (from Long Lake village to a point near the village of Olmsteadville, about forty miles according to the map), our road runs through land upon which *no highway exists at the present time*. On this latter road we cross State land for considerable distances, often *several miles* in extent, and on *all* portions of the road which follow in general existing highways we frequently deviate from the same for distances of varying lengths and also require parcels of land in various places for widening the present highway." An entirely new highway, practically, is thus contemplated. It is wholly unauthorized by the law under which it is sought to be established, which neither requires nor empowers a board of supervisors to construct or to acquire land for the right of way of a new highway over a mile in length, and then only for the purpose of connecting other highways which have been already improved. The State has not yet embarked on the policy of building new highways through the wilderness and has made no provision for the expenditure of any of its funds for such purposes. But even if the boards of supervisors had the power to acquire lands for the construction of new roads, they cannot take lands in the Adirondack Park or other parts of the Forest Preserve.

The act of 1901, as amended, provides that the lands acquired by boards of supervisors, for highway improvement, shall vest in the counties for highway purposes, and that the lands acquired

for obtaining gravel, stone or other purposes or spoil banks, when no longer required, may be sold or leased by the board of supervisors. The lands required for making the improvement, so-called, of the highway described by you which belongs to the State are within the Forest Preserve. The Constitution, article 7, section 7, provides:

“The lands now owned or hereafter acquired, constituting the Forest Preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.”

This is an absolute prohibition on the taking of *any* lands by any person or corporation. A county is a public, municipal corporation; and no county, through its board of supervisors, or otherwise, can take or acquire any of the lands within the Forest Preserve, either for the construction of new roads, the improvement of existing roads, by widening or deviating from the existing lines thereof, or for any other purpose. No county has the right through its board of supervisors, to demand the improvement of any road in the Forest Preserve, nor has the engineer the power or authority to determine whether such roads, shall nor shall not be improved; such roads are not included in the “system of improved market roads,” the improvement of which is provided for by the Good Roads Law. The Forest, Fish and Game Commissioner is the custodian of, and by section 220 of the Forest, Fish and Game Law, is given “the care, control and supervision of the Forest Preserve and all public parks” described in said law and has full power and authority, and is charged with the duty to “lay out roads and paths” therein. He can lay out such roads and paths therein as in his judgment may be required for the use of the public.

But in laying out paths and roads the discretion of the commissioner is limited by the prohibition of the Constitution that timber shall not be destroyed.

The Forest Preserve has been established by the State for the use of the people, who have declared that it shall be forever preserved in its natural state; that it shall be kept as *wild* forest land; and shall not be despoiled of its timber, and they have taken

it out of the power of the legislative or other authority to dispose of it.

The building of "improved" roads through the wilderness would, of necessity, change the character impressed upon it by the people and cause the destruction of large areas of valuable timber in acquiring the "right of way" for roads themselves, and also to reach any bed, pit, quarry, spoil bank, or *other place* in which is located gravel, stone or other material required for the purpose of constructing or maintaining said highways.

It would be an easy matter with the approval by the State Engineer of the resolutions of boards of supervisors requesting the making of "improvements" of the character under consideration, and the preparation by him of plans and surveys therefor and the acquiescence of the Attorney-General in the view that "such improvements" can lawfully be made, and State forest lands appropriated therefor, for persons desiring to obtain possession of said timber lands, to have any quantity of such lands, "acquired" by county boards of supervisors for the ostensible purpose of "spoil banks," sand beds, gravel pits, quarries and other places wherever situated, and rights of way thereto which could be subsequently sold when no longer needed. The State by this indirect method would then be divested, at least on the record, of large portions of its Forest Preserve and of great quantities of timber which somebody had destroyed and removed. This statute at least, affords a way by which the lands of the State in the Forest Preserve can be transferred to individuals or corporations who covet them and of permitting the destruction and removal of timber thereon.

But such roads cannot lawfully be constructed.

No forest lands can be taken from the people, and no tree can be destroyed nor carried away, except by violation of the law, or through an amendment of the Constitution.

I understand that the resolution for the proposed highway under consideration was approved and surveys therefor made by your predecessor last season and that your request is for advice as to the course of procedure to be followed in carrying out the work.

There is no course of procedure for you to follow in this case except to revoke the approval of the resolution of the board of

supervisors and to discontinue any further proceedings thereunder, and in any other case where it is sought to "improve" a road through the Adirondack Park or any other part of the Forest Preserve, to disapprove the resolution of the board of supervisors for the reasons I have herein stated.

Yours very respectfully,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal.

New bridge at Baldwinsville. Syracuse, Lake Shore and Northern Railway must obtain permit to lay additional tracks across.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 2, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your request for an opinion as to the obligation of the State in the matter of providing for electric railway tracks on the roadway of the new highway bridge to be constructed across the new barge canal at Baldwinsville where Syracuse street crosses it.

You state that the new canal at this point follows a new location and that the Syracuse, Lake Shore and Northern Railway Co. has one electric track on Syracuse street, but that you are advised by the chief engineer of that company that it is intended by it to lay a second track and that the weight of the cars will be greater than those now in use.

You ask whether in the construction of the new bridge it would be necessary for the State to make it of sufficient strength to carry maximum loads now using the track, or whether it will be necessary to provide for two tracks and of such strength as is being provided by the railway company in the construction of its own bridges on this line.

Subdivision 4 of section 4 of the Railroad Law, which defines some of the powers and authority granted to railroad corporations, reads as follows:

“To construct its road across, along or upon any stream, watercourse, highway, plank road and turnpike, or across any of the canals of the State which the route of its road shall intersect or touch.”

Section 11 of the same law defines the procedure to be pursued on the part of the railroad corporation in obtaining the consents of the local authorities for building its road along or upon any of the highways, streams or lakes.

Section 8 of the Railroad Law gives the Commissioners of the Land Office the right to grant railroad corporations land belonging to the State for the purpose of constructing railroads within the State.

While subdivision 4 of section 4, above quoted, uses very broad and general language, it must be read in connection with sections 8 and 11, which provide for obtaining the consent of the officers having the care and custody of either State or municipal lands or of the care of the highways and streams.

Section 25 of the Canal Law, among other things, gives the Superintendent of Public Works general authority over the canals of the State and reads as follows:

“The Superintendent of Public Works shall have a general supervisory power over so much of any railroad as passes over any canal or feeder belonging to the State, or approaches within ten rods thereof, so far as may be necessary to preserve the free and perfect use of such canals or feeders, or for making any repairs, improvements or alterations thereupon. No railroad corporation shall construct its railroad over or at any place within ten rods of any canal or feeder belonging to the State, unless it submits to the Superintendent of Public Works a map, plan and profile of such canal or feeder and of the route designated for its railroad, exhibiting distinctly and accurately the relation of each to the other at all the places within the limits of ten rods thereof, and obtain the written permission of the Superintendent of

Public Works and of the Canal Board for the construction of such railroad, with such conditions, directions and instructions as in his judgment the free and perfect use of any such canal or feeder may require. Whenever any street railway shall cross over any bridge spanning a canal, or canal feeder, the company owning, maintaining and operating the same shall be deemed liable for and shall pay all damages that may occur or arise, either to the State or to individuals, by reason of its laying and maintaining its tracks or rails over, upon and across any such bridge, or by reason of the operation of its cars over the same; and any such company shall upon demand of the Superintendent of Public Works, make any repairs to such structure to insure the continued safety thereof as shall have been rendered necessary by reason of such use of said structure by said company. Any company so maintaining or operating a street railway over, upon, and across any such bridge shall indemnify the State against any and all loss, damages or claims for damage, for injuries to person or property of passengers which shall be incurred by or made against such State by reason of the operation of such railway over any such bridge, and the Superintendent of Public Works may, in his discretion, require any company so maintaining or operating a street railway to furnish a bond, with sureties to be approved by him, to indemnify the State from all such loss, damage or claims. All such permits heretofore or hereafter granted shall be revocable whenever the free and perfect use of any such canal or feeder may so require, or if such railway company shall fail to make any such repairs when required by the Superintendent of Public Works and the railroad company using or occupying any bridge over the same shall, within a reasonable time after the service upon it of written notice of such revocation, or to make such repairs by the Superintendent of Public Works, remove at its own cost and expense its railroad from such bridge and from the limits of ten rods of said canal or feeder."

A street railroad corporation is a railroad corporation and is subject to the provisions of section 25 of the Canal Law, above

quoted. It must obtain the written permission of the Superintendent of Public Works and of the Canal Board for the construction of its railroad over or at any place within ten rods of any canal or feeder belonging to the State and upon such conditions, directions and instructions as, in the judgment of the Superintendent of Public Works, the free and perfect use of such canal or feeder may require.

A street railroad corporation cannot construct its railroad across any bridge owned by the State over the new barge canal without obtaining the like permission. To entitle the Syracuse, Lake Shore & Northern Railway Company to cross the new bridge over the barge canal on Syracuse street in Baldwinsville, it must obtain the permission provided for in the above section.

Chapter 147 of the Laws of 1903 makes it the duty of the State Engineer to prepare plans and specifications for the new barge canal including all necessary structures in connection therewith, which plans must be approved by the Canal Board. In the building of bridges over the barge canal, such bridges should be provided as, in the judgment of the State Engineer and the Canal Board, public necessity requires. If the Syracuse, Lake Shore & Northern Railway Company now has permission to cross the present bridge with a single track and should desire to lay an additional track thereon, it would be necessary for it to obtain the permission of the Superintendent of Public Works and the Canal Board so to do, and would be required to make any repairs thereto that might be necessary to insure the continued safety thereof, or as might be necessary by reason of the construction of such additional track and the use and operation of heavier cars thereon.

The State is not required to build bridges for any street railroad company, or alter, strengthen or rebuild them to enable such company to operate its railroad most advantageously to itself. If, to enable such railroad company to construct a double track road across the bridge and to use and operate heavier cars it will be necessary to construct a bridge of a different character and at a greater expense than in the judgment of the State Engineer and the Canal Board is adequate for the ordinary uses of the public, the company can, as a condition of permission to use such bridge,

without which it cannot do so, be compelled to pay such additional expense.

Permits heretofore or hereafter granted to cross the canals or use the bridges thereof by a railroad company, are revocable whenever the free and perfect use of any such canal may so require, or, if such railway company shall fail to make any repairs when required by the Superintendent of Public Works; and such railroad company must remove its railroad from such bridge at its own cost and expense upon the revocation of such permits by the Superintendent of Public Works.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law — Bridges.

Whether State should build bridge or furnish right of way to existing highway, from farm which has been isolated by new Barge Canal.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 6, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I have your favor requesting an opinion as to whether or not the State is obliged to build a bridge to enable a land owner owning land on both sides of the barge canal to cross the canal and whether, if the State does not build such a bridge to enable a land owner on both sides of the canal to cross the canal, it is obliged to furnish a right of way to an existing highway from the land cut off from the main portion of a farm by the barge canal.

You state that "on the existing Erie, Oswego and Champlain canals there are many bridges known as farm bridges, that is, they have been built by the State to enable owners of farm lands to cross the canal to reach certain portions of their farm.

In the proposed improvement of these canals known as the barge canal in certain places, in order to obtain land upon which waste material has been placed, it has been found necessary to appropriate all of the land in certain farms cut off from the main portion of the farms by the proposed barge canal. At other points there are varying quantities of land left unappropriated and cut off from the main portion of the farm by the new canal."

Section 3 of chapter 147 of the Laws of 1903 describes the manner of improving the Erie canal, the Oswego canal and the Champlain canal and the kind and character of structures to be built. Among other things it provides:

"New bridges shall be built over the canals to take the place of existing bridges wherever required or rendered necessary by the new location of the canal. All fixed bridges and lift bridges when raised shall have a clear passageway of not less than fifteen and one-half feet between the bridge and the water at its highest ordinary navigable stage."

There is no other provision of law relating to the building of bridges over the new barge canal. The State Engineer is authorized and required to make all maps, plans and specifications for the work to be done and materials furnished in the work of improving the above canals, which maps, plans and specifications must be approved by the Canal Board. The location and building of all bridges is, by the statute, left entirely within the discretion of the State Engineer and Canal Board. There is no provision of the law by which the State is required to build a farm bridge over the new barge canal to enable a land owner having land on both sides thereof to cross the same and there is no provision of the law that requires the building of a private road to enable the owner of land cut off from the main portion of his farm to reach an existing highway. The provisions of the Canal Law, sections 111, 112 and 113, which authorize the Superintendent of Public Works to construct farm bridges over the existing canals, or to lay out a private road in lieu of such bridges, are not applicable to the new barge canal. The provisions of those sections are entirely inconsistent with the provisions of the Barge Canal Law. Those sections confer upon the Superintendent of Public

Works the sole power of determining the necessity of building farm bridges and private roads, but as above stated, the power of determining the location and character of all bridges and other structures over the new barge canal is now vested in the State Engineer and the Canal Board.

Section 4 of chapter 147 of the Laws of 1903 provides:

“The State Engineer may enter upon, take possession of and use lands, structures and waters, the appropriation of which for the use of the improved canal is for the purposes of the work and improvements authorized by this act, as shall in his judgment be necessary.”

This leaves it entirely within the discretion of the State Engineer to determine the necessity of taking any lands or waters and to determine the quantity of lands required for the purposes of the improvements. The State Engineer is authorized to take such quantities of land as may be necessary, not only for the actual present uses of constructing the canal, but for its care, maintenance and protection in the future, and the determination of the quantity of lands necessary for such purposes, is not subject to review by the courts. In proceedings that have already been had by owners, whose lands have been appropriated by the State for the new barge canal, the Court of Claims has determined that where the new barge canal runs through lands, part of which are isolated, and which have no means of egress except over lands of some other person, the owner is entitled to recover as damages substantially the entire value of the land so isolated. In making appropriations of lands for the new barge canal, the State Engineer should appropriate such lands as in his opinion may be necessary for the construction, maintenance and protection of the improved canals, and as the public interests may require.

Yours respectfully,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law — Bridges.

Whether provision should be made by State Engineer for railroad tracks leading to kiln of Keenan Lime Company, at Smith's Basin.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 9, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your request for an opinion as to whether or not in the preparation of plans for the improvement of the Champlain canal, you should make provision for carrying the railroad tracks crossing the proposed location of the canal, leading to the kilns of the Keenan Lime Company at Smith's Basin, and leading to the stone crushing plant of the Champlain Stone and Cement Company at Fort Ann, and leading to the stone crusher of J. J. Callanan at a point about two miles south of Whitehall, and the main track of the Rutland and Whitehall Railroad in the village of Whitehall, east of the Delaware and Hudson Railroad Company's station.

You say that "title to the right of way leading to the kilns of the Keenan Lime Company is in that company, the rails belonging to the Delaware and Hudson Railroad Company. The title to the stone-crushing plant of the Champlain Stone and Cement Company is in that company and I believe that they also own the rails and ties. The railroad company owns the right of way and tracks in the other two tracks referred to."

In the work of the improvement of the Erie, Oswego and Champlain canals, the State Engineer is authorized to enter upon and take possession of the necessary lands, structures and waters as in his judgment may be required for the use of the improved canals. Section 4 of chapter 147 of the Laws of 1903, prescribes the procedure for appropriating lands, etc., for the use of the improved canals. Upon the service of the notice, provided for by that section, by the Superintendent of Public Works, the entry upon and appropriation by the State of the real property therein described is complete. The State upon making such appropriation

is required to make compensation to the owners of the lands appropriated. The amount of such compensation is to be determined, either by an agreement made by the Board of Special Examiners and Appraisers, pursuant to the provisions of chapter 335 of the Laws of 1904, or by the Court of Claims.

Where the improved canals follow a new location and the railroad of a railway company is intersected and its right of way appropriated, and it becomes necessary for the railway company to build a bridge, in order to enable it to continue to operate its road, the actual expense incurred by the railway company in so doing would be the measure of the compensation to be made to it by the State. The Board of Special Examiners and Appraisers have the authority, with the approval of the Canal Board, to enter into an agreement with a railroad company whose right of way is thus appropriated, to make such compensation.

The State Engineer or the Canal Board have not the authority to make, nor should they assume the responsibility of making, plans for bridges of railroad companies crossing the improved canals, nor are they authorized to contract for or to build such bridges. When the State has made compensation to a person or corporation for its lands, property or rights connected therewith or for damage caused by the work of improvement, its obligations and duties have been fully performed, and any bridges of a railroad corporation that are authorized to be built across the improved canals, must be built and paid for by such railroad company.

A railroad corporation may construct its railroad over any of the canals of the State, including the new barge canal, upon obtaining the written permission of the Superintendent of Public Works and of the Canal Board. It must submit to the Superintendent of Public Works a map, plan and profile of the canal to be crossed and of the route designated for its railroad, exhibiting distinctly and accurately the relation of each to the other at all places within the limits of ten rods of such canal, and the permission to cross such canal may be granted upon such conditions, directions and instructions as in the judgment of the Superintendent of Public Works the free and perfect use of such canal may require.

Where, in the improvement of the canals, it becomes necessary for a railroad company to build a new bridge or to rebuild a bridge, and the amount of compensation to be paid by the State is agreed upon by the Board of Special Examiners and Appraisers and the necessary permission to build or rebuild such bridge is granted by the Superintendent of Public Works and the Canal Board, the plans for such bridge are subject to the approval of the Canal Board and the manner of building the same is subject to its direction and supervision. The agreement made by the Special Board of Examiners and Appraisers with a railroad company for the compensation to be paid by the State, can provide for the construction of such bridge by the railroad company in the manner and in accordance with the terms and conditions imposed by the Canal Board and as a condition of the payment by the State of the agreed compensation. In this manner, the character of the bridge and its mode of construction can be kept within the control of the Canal Board.

There is no provision of law authorizing the Superintendent of Public Works and Canal Board to grant permission to any individual, association or corporation, other than a railroad corporation to construct a railroad over, upon, across or within ten rods of any of the canals of the State.

I am of the opinion that there is no authority for granting permission to the Keenan Lime Company to construct a spur track across the new barge canal at Smith's basin or to the Champlain Stone and Cement Company to construct a spur track at Fort Ann across such canal.

The compensation to be made to a railroad corporation for the building or rebuilding of bridges, rendered necessary by the construction of the improved canals, should be limited to the cost of such structures as are required to enable such company to operate its railroad in the manner it is now operated, and not for the expense of constructing a bridge to enable it to operate its railroad with more or additional tracks than it has in actual use at the time the State makes appropriation of its property.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Sewers — Cities.

Whether State should pay for alterations in sewer in Amsterdam made necessary by the construction of Dam No. 7, in the Mohawk River, Barge Canal.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 12, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your favor in which you request an opinion on the following point:

“Should the State of New York pay for alterations and changes in the sewer system of the City of Amsterdam made necessary by the construction of Dam 7 in the Mohawk River?”

You state that the State has appropriated for barge canal purposes the land lying between the New York Central and Hudson River Railroad and the Mohawk river in the vicinity of proposed Dam 7, and that the city of Amsterdam before this land was acquired by the State built an eighteen-inch vitrified pipe sewer from the foot of Henrietta street across lands now owned by the State to the Mohawk river, and that the elevation of this sewer is such that during the canal season when Dam 7 is in operation, the water will back up the sewer outlet, and at the intersection of Henrietta and West Main streets will have a depth of from one foot three inches, to two feet three inches, depending on the elevation of the water in the pool above Dam 7.

I find that the sewer system was constructed in the city of Amsterdam under the authority of chapter 533 of the Laws of 1886 entitled, “An act to provide for the construction of a system of sewers in the city of Amsterdam,” as amended in 1887. I do not find that the city of Amsterdam was authorized by this or any other act to discharge its sewage into the Mohawk river.

The Mohawk river is a navigable stream and the title to the bed of the river is in the People of the State.

No municipality has a greater right than an individual to discharge sewage into any natural stream or water course and a municipality is subject to the same rules of law in relation to the pollution of such stream as an individual and can be restrained from so doing. There are several recent cases in which municipalities have been restrained from discharging sewage into natural streams or water-courses, on account of the fact that the discharge of such sewage created a nuisance and was a menace to the health of the public.

The State is engaged in the work of improving the canals of the State and as a part of the scheme of such improvement adopted by the Legislature, it is using a portion of the Mohawk river the title to which has always been in the People. If in making this public improvement the sewers and drains of municipalities or individuals, that discharge into the river, are interfered with and it becomes necessary for such municipalities or individuals to alter such sewers and drains and to provide for the discharge of their contents at another or different place, such alterations and changes must be made by the municipalities or individuals affected at their own expense.

The State in such case does not take any property of the persons thus affected and the injuries caused thereby are incidental and consequential and the State is under no obligation to make compensation therefor.

The State should not pay for alterations and changes of the sewer system in the city of Amsterdam made necessary by the construction of Dam 7 in the Mohawk river.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Labor Law—Eight Hour Law.

Compliance with provisions of, by Empire Engineering Corporation, while contracting for State on Contract No. 1.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 15, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your communication relative to the employment by the Empire Engineering Corporation, the contractor engaged in the execution of Contract No. 1, of laborers, workmen and mechanics for more than eight hours a day, and requesting an opinion with reference to their right so to do.

Section 3 of the Labor Law provides that:

“Eight hours shall constitute a legal day's work for all classes of employees in this State except those engaging in farm and domestic service unless otherwise provided by law * * *. Each contract to which the State or municipal corporation is a party, which may involve the employment of laborers, workmen or mechanics, shall contain a stipulation that no laborer, workman or mechanic in the employ of a contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, shall be permitted or required to work more than eight hours in any one calendar day, except in cases of extraordinary emergency caused by fire, flood or danger to life or property. The wages to be paid for a legal day's work, as hereinbefore defined, to all classes of such laborers, workmen or mechanics, upon all such public work or upon any material to be used upon or in connection therewith, shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality within the State where such public work, on, about, or in connection with which such labor is performed in its final or completed form, is to be situated, erected or used.”

This statute was a re-enactment of the former law, a part of which had been held unconstitutional by various decisions of the courts. The amendment of section 1, article 12 of the Constitution, adopted in 1905, authorized the Legislature to regulate wages, hours of labor, etc., and thereafter the law was again enacted in its present form. This law limits the hours of labor and has become the fixed definite policy of the State after a long struggle on the part of those interested in the welfare of workmen.

The contract made by the State with the Empire Engineering Co. has embodied in it the provisions of section 3 of the Labor Law, above quoted. The contract also contains a provision that "the contractor shall make said improvements and conduct the work in compliance with all laws of the State of New York and with the lawful directions of the officers, agents or representatives of the State * * *."

It is the undoubted fact that bidders, in submitting proposals to do work for the State by contract, base their estimate upon an eight-hour work-day for all laborers, workmen and mechanics and upon the prevailing rate of wages in the locality where the work in its final form is to be accepted or completed.

In my opinion all work which is necessary, incidental to or connected with the execution of the contract, and which is performed by laborers, workmen or mechanics, is included within the terms of the contract, and the contractor is not authorized to employ such laborers, workmen or mechanics upon any of such work more than eight hours a day, except in cases of great emergencies caused by fire, flood or danger to life or property; that all such work covered by, and which can be fairly said to have been included within the amount of the bid and the contract, is work which is covered by the provisions of the Eight Hour Law.

I cannot undertake to specify every item of such work so included within the provisions of the Eight Hour Law, but it is a subject within the knowledge of the State Engineer and I think that under the terms of the contract he is the judge of whether such work comes fairly within its terms.

I think that these contracts should be strictly construed in accordance with the obvious intent of the Legislature to limit the hours of labor on all public contracts, and that no evasion thereof should be permitted by persons who contract with the State to do its work.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law — Bridges.

State not authorized to prepare plans for bridge over Mohawk River at Dunsbach Ferry.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 15, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your request for an opinion as to whether or not the State Engineer is authorized by law to prepare plans and estimates for a new highway bridge over the Mohawk river at Dunsbach Ferry.

You state that the Dunsbach Ferry Bridge Company was incorporated February 11, 1898, under chapter 9 of the Laws of 1898, in relation to transportation corporations. Such company constructed a bridge across the Mohawk river at Dunsbach Ferry in 1898, and on March 1, 1903, two spans of the bridge were carried away by an ice jam and the remaining span was carried away in March, 1905. After the bridge was carried away traffic was carried on across the river by a rope ferry. In January, 1906, a deed was recorded in Saratoga county clerk's office in which Walter P. Butler, as referee, deeded to James M. Lamb the property of the bridge company at the point where the bridge formerly stood.

I have caused an examination of the records to be made and I find that on April 13, 1903, an order was made by the County Court of Saratoga county granting a license to William T. Ford to operate a ferry across the Mohawk river at Dunsbach Ferry, and that this order was revoked May 1, 1906. I am unable to find that any license to operate a ferry at this point was ever granted by the County Court of Albany county or that there is any license now existing authorizing the operation of a ferry at this point.

The Mohawk river is a navigable stream and the title to the bed thereof is, and ever since the existence of this State has been, in the people of the State. The maintenance of a rope or cable across the Mohawk river for the operation of a ferry constitutes an obstruction to navigation and is unauthorized and unlawful, and such rope or cable can be removed at any time by the canal authorities.

The Mohawk river from the dam above Cohoes to Little Falls was appropriated by the State, by chapter 147 of the Laws of 1903, for canal purposes. It is now, by virtue of said act, a part of the canal system of the State and bridges cannot be constructed across it except in the manner provided for by the provisions of the Canal Law. The Dunsbach Ferry Bridge Company is a bankrupt and all its property and franchises have been sold in proceedings to foreclose a mortgage given by it upon all of its said property and franchises.

The State is not authorized or required to prepare plans for any bridge at Dunsbach Ferry.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law — Lease of Surplus Waters.

Reconstruction of new hydraulic race and tunnel at Lockport.

Whether State is liable for this and any changes incidental to Barge Canal construction in structures used for purposes of power development in and near Lockport.

(See also opinion April 27, 1905.)

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, N. Y., August 30, 1907.

HON. FREDERICK SKENE, *State Engineer and Surveyor, Albany, N. Y.*:

Dear Sir.—I am in receipt of your favor transmitting to me copy of a preamble and resolutions passed by the Advisory Board of Consulting Engineers, as follows:

“Whereas, Since it is apparent that considerable expense will be incurred in the reconstruction of a hydraulic race and a hydraulic tunnel for supplying certain power plants near the Erie canal in the city of Lockport when the lock system at said place is enlarged in barge canal construction, therefore be it

“Resolved: That it be recommended to the State Engineer that he promptly request an opinion from the Attorney-General as to whether or not the State of New York is liable for the construction of a new hydraulic race and the necessary changes in the hydraulic tunnel to replace the present hydraulic race to fit the present hydraulic tunnel to the new conditions heretofore referred to.

“Further Resolved: That it be recommended to the State Engineer that he request an opinion from the Attorney-General as to the liability of the State of New York to make any necessary changes incidental to barge canal construction in any structures used for purposes of power development in and near Lockport.”

By chapter 275 of the Laws of 1825, section 3, the Legislature provided:

"That whenever, in the opinion of the canal commissioners, any water may be spared from either the Erie or Champlain canal, or any canal or work which has been or shall be constructed by the authority of the state, without injury to the navigation or safety thereof, in such case the canal commissioners are authorized to lease the said waters to such person or persons as may be willing to give the highest annual rent therefor, reserving, however, in the lease to be given, the right to limit, control or wholly resume the said waters, and all the rights granted by any such lease, whenever, in the opinion of said commissioners, or of the Legislature, the safety of such canals or works or the necessary supply of water for the navigation of any canal which now is or hereafter may be constructed by the authority of the state, render such limitation, control or resumption necessary; and whenever any lease for waters as aforesaid shall be executed, the rent reserved therein shall be required to be paid over annually to the commissioners of the canal fund; and if at any time such rent shall remain unpaid for one year after the same shall become due, in that case the said lease shall be forfeited to the state; and the said commissioners are hereby authorized and directed to let out the same in like manner as if no lease thereof had ever been executed; but in all cases where such waters may be spared as aforesaid, it shall be the duty of the said commissioners to cause written notice to be put up in some public place near the said waters, at least thirty days previous to the execution of any lease, describing the waters which may be so spared, and stating the time when and the place where proposals may be received for the same. *Provided, that in any case where the waters, or the use thereof granted or leased by virtue of this act, are resumed as aforesaid, no damage or compensation shall be paid or allowed to any person or persons who may have made improvement or erections in consequence of any such grant or lease.*"

In pursuance of the above quoted statute, on the 25th day of January, 1826, the Canal Commissioners executed a lease to Rich-

ard Kennedy, of the town of Lockport, and Junius H. Hatch, of the city of New York, their heirs, executors, administrators and assigns of

“all the surplus waters which without injury to the navigation or security of the canal may be spared from the canal at the head of locks in the village of Lockport to be taken and drawn from the canal, at such place and in such manner and to be discharged into the lower level at such place and in such manner as the Canal Commissioners shall from time to time deem most advisable for the security of the canal and for the convenience of the navigation thereof. And the said Kennedy and Hatch hereby jointly and severally covenant and engage to pay to the commissioners of the canal fund, yearly and every year, the sum of two hundred dollars; and for the punctual payment thereof they hereby bind themselves, their heirs, executors, administrators and assigns. And it is hereby expressly understood and agreed that the canal commissioners reserve to themselves and to the Legislature the right to limit, control or wholly resume the said water and all the rights granted by this lease, whenever in the opinion of the said canal commissioners or of the Legislature the safety of the canal or its appendages or the necessary supply of water for the navigation of the canal shall render such limitation, control or resumption necessary.”

I am unable to find that the Canal Commissioners or the Canal Board ever granted to any person or persons the right to the use of any surplus waters at Lockport except those leased by the above-mentioned instrument. All the rights which the Lockport Hydraulic Company, the present holder of the above-mentioned lease, have in the waters taken through the race and hydraulic tunnel at the head of the locks are given by such lease.

The rights of the users of water taken from the canal at the head of the locks at Lockport have been the subject of discussion in former years. In 1859 several persons who were the users of water under the leases by virtue of the original lease to Kennedy and Hatch presented claims to the canal appraisers for

damages alleged to have been sustained by them from 1838 to 1859 by reason of the interruption of the use of such waters during the enlargement of the Erie canal. In the progress of the enlargement of the Erie canal it became necessary to enlarge the deep rock cutting through the said mountain ridge, not only to correspond with the intended enlargement of the whole canal, but also to furnish a supply of water to the enlarged canal for the purposes of navigation sufficient to feed the same as far east as the Seneca river. To effect this work, it was necessary to shut off the water above said ridge during the winter in each year while this enlargement was being prosecuted, and it appears that it was first shut off for that purpose by throwing a dam across the canal above the mountain ridge in the fall of 1838, excluding the water until about the time of the resumption of navigation the ensuing year, and that this process was repeated every year, save one, to and including the year 1858. In 1860 the Legislature passed chapter 414 of the Laws of that year, which conferred jurisdiction upon the Canal Board to hear the evidence regarding the claims of persons for damages and to make a determination with reference thereto. Claims aggregating about \$269,000 were presented to the Canal Board, which heard the evidence relating thereto and thereafter unanimously, upon the report and opinion of Attorney-General Myers, disallowed such claims. The question of damages for shutting off the supply of water during the winter months and the right of the State so to do by virtue of the act of 1825 and also of the contract with Kennedy and Hatch was fully discussed in the opinion of Attorney-General Myers, and I herewith send you a copy of such opinion.

The lease to Kennedy and Hatch provides:

“It is hereby expressly understood and agreed that the canal commissioners reserve to themselves and to the Legislature the right to limit, control or wholly resume the said water and all the rights granted by this lease, whenever in the opinion of the said canal commissioners, or of the necessary supply of water for the navigation of the canal, shall render such limitation, control or resumption necessary.”

The act of 1825 provides:

“That in any case where the waters or the use thereof granted or leased by virtue of this act are resumed as aforesaid, no damages or compensation shall be paid or allowed to any person or persons who may have made any improvement or erections in consequence of any such grant or lease.”

While this latter provision of the statute was not incorporated in the lease, the lease itself recites that it is made in pursuance of the provisions of the act passed April 20, 1825, entitled “An act concerning the Erie and Champlain canals.” Such provisions govern the liability of the State upon limiting, controlling or wholly resuming such waters.

The nominal amount of rent reserved by this lease is a very clear indication that the parties thereto had in mind the fact that the State might at any time limit, control or resume, without compensation, the whole or any part of the waters leased.

From the report of Mr. W. B. Landreth, special resident engineer, regarding past, present and future use of surplus water at Lockport, dated June 20, 1907, and from the report of T. W. Barrally, resident engineer, dated May 17, 1907, furnished me by Special Deputy Engineer William R. Hill, some idea may be obtained of the extent of this splendid water power at Lockport, and from which it appears that something like 5,000 horsepower is developed from the hydraulic race and tunnel in question.

In the case *ex parte Miller*, reported in 2 Hill's Reports, page 418, the right of canal commissioners to resume the waters of the Erie canal leased by virtue of the above quoted statute, and the liability of the State to make compensation to the lessee upon such resumption, was fully discussed and it was decided that the Canal Commissioners had the right to resume such waters, in whole or in part, without making any compensation therefor. The court said that “No formal expression of opinion by the Commissioners was necessary that the water could no longer be spared consistently with the interests of navigation. Such appears to be the fact and the Commissioners have made the requisite alteration. Whatever the fact may be, that opinion is made the test. There can be no legal objection that it was formed arbitrarily,” and that a mandamus would not lie to con-

trol the action of the Commissioners in making a determination to resume the waters of the canals at least under the provisions of the statute.

It is wholly within the power of the Superintendent of Public Works under the direction of the Canal Board to limit, control or wholly resume the waters granted by the lease to Kennedy and Hatch above-mentioned, whenever in his opinion the safety of the canal or water necessary for navigation render such limitation, control or resumption necessary. In the construction of the new barge canal the character of the locks at Lockport are practically described by chapter 147 of the Laws of 1903, and the engineer in making his plans for the improvement at Lockport is required only to carry out the provisions of the act and to provide for the construction of the locks at that point upon such a plan as in his judgment and in the judgment of the Canal Board the best interests of the State require.

In preparing such plans it is not necessary for the engineer to make any provision for the reconstruction of the hydraulic race and hydraulic tunnel of the Lockport Hydraulic Company for the purpose of supplying the power plants near the Erie canal in the city of Lockport, and the State is under no liability for the construction of a new hydraulic race or to make any changes therein or in the hydraulic tunnel or to replace either of such structures.

The lease to Kennedy and Hatch reserves an annual rental, but the period of the life of the lease is not mentioned. Such a lease of lands is held by the courts to be a lease from year to year which can be terminated at the option of either party at the end of any year upon giving the requisite notice. A provision of the lease requires that the rent shall be paid on the first day of January of each year and that if it remains in arrears for a longer period than one year, that it shall be forfeited to the State. An examination of the books of the Comptroller shows that many times the Lockport Hydraulic Company has been in default in the payment of rent reserved by this lease for a longer period than a year, and that it has only been by the acquiescence of the State officers that such company has been permitted to continue in the use of the waters reserved by the lease until the present time.

The Attorney-General, in an opinion dated April 27, 1905, (page 329, Attorney-General's Opinions 1905), reported with reference to outstanding leases of surplus waters and said that "certain leases grant the privileges to take water from the canal but specify no term for which the same should run, simply providing for an annual rent. I am of the opinion that such a lease can be cancelled at the end of any year." I fully concur in this opinion.

I am unable to find any lease or leases of surplus waters at or near Lockport except the lease to Kennedy and Hatch above mentioned or that the State received any compensation whatever for any of the waters taken from the level of the canal below the locks which are used in the development of the immense amount of power along the eighteen-mile creek.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

CANAL BOARD.

At a meeting of the Canal Board, held at the Canal Department the seventh day of December, in the year 1860.

By Mr. Myers:—

In the Matter of the CLAIMS IN RELATION TO THE SURPLUS WATERS OF THE CANAL AT LOCKPORT, AND THE LESSEES THEREOF.

These cases come before this Board by virtue of chapter 414 of the Laws of 1860, which alone confers jurisdiction thereof. These claims have not been passed upon by the Canal Appraisers, and are not here by appeal or in any manner under the usual jurisdiction of the Canal Board. The Canal Commissioners in 1859 examined the cases and took the only evidence in regard to the claims which has been submitted here, and then dismissed the claims for want of jurisdiction.

The act of 1860 "authorizes and requires the Canal Board, within the current year, to ascertain, appraise and award the damages sustained by the lessees of the surplus water of the canal at Lockport for which the State is liable, occasioned by the diversion of the said waters during the progress of the enlargement of the Erie canal in the years 1838 to 1859, inclusive, upon the evidence taken before the Canal Commissioners in July, 1859, and such other evidence as the Board may deem fit; the said Board being hereby fully authorized to pass upon the legality, equity and justice of the said claims for damages." "The sum which shall be awarded, if any, under the provisions of the first section of this act, the Treasurer shall pay," &c.

The evidence taken by the Canal Commissioners shows that on the 26th day of January, 1826, the Canal Commissioners leased to Richard Kennedy, of Lockport, and Junius W. Hatch, of New York, "in pursuance of an act entitled 'An act concerning the Erie and Champlain canal, passed April 20, 1825,' all the surplus waters which, without injury to the navigation or security of the canal, may be spared from the canal at the head of the locks in the village of Lockport, to be taken and drawn from the canal at such place and in such manner and to be discharged into the lower level at such place and in such manner as the said Canal Commissioners shall from time to time deem most advisable for the security of the canal and for the convenience of the navigation thereof."

The lessees covenanted to pay a rent of two hundred dollars a year, on the first day of January of each year. There is no habendum clause in the lease or other limit of the term, but it was "expressly understood and agreed that the Canal Commissioners reserve to themselves and to the Legislature the right to limit, control or wholly resume the said water and all the rights granted by this lease, whenever in the opinion of the Canal Commissioners or the Legislature the safety of the canal or its appendages, or the necessary surplus of water for the navigation of the canal, shall render such limitation, control or resumption necessary."

The third section of the act of 1825, referred to in said lease

and in pursuance whereof the lease is on its face declared to have been made, provides as follows (Laws of 1825, page 399):

“III. And it be further enacted, That whenever, in the opinion of the Canal Commissioners, any water may be spared from either the Erie or Champlain canal, or any canal or work which has been or shall be constructed by the authority of the State, without injury to navigation or safety thereof, in such case the Canal Commissioners are authorized to lease the said waters to such person or persons as may be willing to give the highest annual rent therefor, reserving, however, in the lease to be given the right to limit, control or wholly resume the said waters, and all the rights granted by any such lease, whenever in the opinion of said Commissioners or the Legislature the safety of such canal or works or the necessary supply of water for the navigation of such canal which now is or hereafter may be constructed by the authority of the State, render such limitation, control or resumption necessary.”

Provided, that in any case where the waters in use thereof granted by virtue of this act are resumed as aforesaid, no damages or compensation shall be paid or allowed to any person or persons who may have made any improvements or erections in consequence of any such grant or lease.

The said evidence further shows that the several claimants under said first mentioned act and who are mentioned below derive title severally to the waters used and claimed by them by assignments or leases of their respective proportions of said waters under the said original lease to Kennedy & Hatch, either mediately or immediately.

That the Western division of the Erie canal, extending from Buffalo eastwardly about one hundred and twenty-eight miles to the Seneca river, is exclusively supplied with water from Lake Erie. The water taken from the lake is first carried through the canal to Tonawanda creek, thence through a channel deeply excavated in the rock of the mountain ridge for about seven miles, until it emerges into the deep ravine around which the present

village of Lockport is built. Down this ravine the waters descend by a series of five double combined locks, having a total lift of about sixty feet. From the foot of the locks the water flows through the canal eastwardly for sixty-five miles through several levels to the Seneca river, with no considerable supply of waters for these one hundred and twenty-eight miles of canal except that derived through the mouth of the canal from Lake Erie. Only a small portion of the waters drawn from Lake Erie flows through the prism of the canal or the locks at Lockport. The most of it is carried around the locks through a race and discharged into the canal below, as far as required to supply the waters used therein, and any excess beyond the requirements of the canal is allowed to escape and run off through the ravine. The water used for hydraulic purposes by the grantees or assignees of the original lessees is used in the passage from the head to the foot of the locks and is not strictly "surplus waters" in any other sense than that it can be spared from the use of navigation through the locks. It may be all necessary for the use of the canal below the locks, in which case, though used to propel machinery on its passage, it can be returned to the canal for the purposes of navigation below the locks as readily as if it had not in its passage propelled their machinery. It will be observed that the lease of these waters was granted under and in pursuance of a general statute relating to all the surplus waters of the Erie and Champlain canals, and not under any special law relating to this particular locality or adapted particularly to the peculiar circumstances of this case.

Under no other leases of surplus waters along the line of the canals has it, I think, been claimed that the lessees were entitled to the use of such waters during the suspension of canal navigation, or that the State was liable to damage for having withdrawn the waters from the canal during the suspension of the navigation thereof.

In this particular instance it is claimed that the water was never required to be withdrawn for the safety of the canal. On the contrary, that its safety is promoted by allowing the water to flow freely from Lake Erie to Lockport during the winter, and

that consequently the claimants are entitled, under their lease, to a perpetual water power and that in case it was interrupted by the act of the State, the lessees are entitled to claim and receive damages from the State for any such interruption, which is not strictly and technically within the limitations contained in the lease, to wit: "The safety of the canal or its appendages, or the necessary supply of water for the navigation of the canal." In the progress of enlarging the Erie canal it became necessary to enlarge the deep rock cutting through the said mountain ridge, not only to correspond with the intended enlargement of the whole canal but, also to furnish a supply of water to the enlarged canal for the purposes of navigation, sufficient to feed the same as far east as the Seneca river. To effect this work, it was necessary to shut off the water above said ridge during the winter, in each year while this enlargement was being prosecuted, and it appears that it was first shut off for that purpose by throwing a dam across the canal above the mountain ridge in the fall of 1838, excluding the water until about the time of the resumption of navigation the ensuing spring, and that this process was repeated yearly and every year, save one, to and including the year 1858.

For this diversion the claims for damages filed before this Board are as follows:

L. A. Spalding	\$159,283 71
John R. Grindley	8,625 00
W. P. & W. J. Daniels	29,977 76
Niagara Manufacturing Co.	41,998 69
Douglass & Jackson	22,383 38
George H. Elliott	3,125 00

Making an aggregate of \$265,393 54

to be somewhat increased by additional interest if the above claims are found by this Board to be legal, equitable and just.

The act of April 18, 1838, (Laws of 1838, page 282):

"Sec. 1. The Canal Commissioners are hereby authorized to settle with all persons claiming damages on account of any surplus waters of the canals of this State being resumed by the Commissioners for the use of the canals or for other

purposes, or on account of not being allowed in whole or in part of any surplus waters sold or leased to such claimants. And, on cancelling such leases and claims, to pay the claimants out of the canal fund such sum of money as may be mutually agreed on between them."

It was under this act that these claims were preferred before the Canal Commissioners in 1859, in which proceedings the testimony used before this Board and referred to in the first mentioned act was taken; and the Commissioners dismissed the claims for want of jurisdiction thereof on two grounds, first, that it was only to cases of absolute resumption that the act applied, of which they held this not one, the resumption being temporary only; second, that the act in terms required a cancelization of the lease out of which the claims grew before compensation could be made, and no offer to cancel the lease being made, they decided that they could not act further in the matter. The act of 1860, above recited, was then passed, and under it the claims are before this Board.

It is claimed here that the statute under which this Board is acting assumes that there was a diversion of surplus waters for which the State is liable, and that our only duty is to ascertain and award the amount of damages. I have examined and expressed my opinion on this proposition in the case of the claims of Luther Wright and William O. Hubbard under a statute in this respect entirely like this, and beg to refer to reasons there given to show this assumption unfounded which it is unnecessary here to repeat.

It is also claimed that it is our duty in inquiring into the "legality, equity and justice" of these claims for damages to disregard the known rules of law defining rights and liabilities as between parties, which are characterized as technicalities, and insisted that our duty under this act "embraces in largest measure the high and exalted equity of a sovereign State governed only by conscience."

I have also endeavored to answer this assumption in the case before referred to and will not repeat the answer then given thereto.

I shall assume that in deciding these claims we are to ascertain whether the claimants have suffered any damage at the hands of the State, and that damage can only arise from the infraction of some right recognized by the municipal jurisprudence and for which infraction damage would be awarded or recompense provided as between party and party by the known and established rules of either law or equity.

It is insisted that not only does the act of 1860 recognize and assume the liability of the State to the claimants, but that the act of 1838 also established the same proposition. As to the act of 1838, we are not without the light of eminent judicial construction. In *ex parte*, Miller, 2 Hill 418, Judge Cowen in reference to this act says: "That statute, indeed, declares that the Canal Commissioners are authorized to settle with all persons claiming damage on account of leased surplus water being resumed in whole or in part, and to pay the amount to be agreed upon out of the canal fund. But the statute creates no new right. It must have presupposed cases of legal or equitable claim; not a case where the lessee stipulated to use the water in subordination to the claims of the canal and, to enforce such use, stipulated farther that the State might on the opinion of its agents at any time revoke or modify the privilege without being liable to respond in damages. A right to damages under such circumstances, if it exist at all, is but *jus precarium*, not *jus legitimum*."

The real argument on which the claim for damages in these cases rests is drawn from the words of reservation contained in the leases. These words are, "the right to limit, control or wholly resume the said water and all the rights granted in this lease, whenever in the opinion of the Commissioners or of the Legislature the safety of the canal or its appendages or the necessary supply of water for the navigation of the canal, shall render such limitation, control or resumption necessary." It is insisted that these express reservations necessarily exclude any and all implied reservations of power by the State, and that unless the diversion or rather exclusion of the water in question comes within the letter or spirit of the very terms of the reservation, it was an infraction of the rights of the claimants.

That it is not and cannot be pretended that the safety of the canal or its appendages required the exclusion of the water, neither was it necessary in order to obtain a necessary supply of water for the canal as the canal was and existed at the time the lease was executed, and that the words "the canal" in the lease cannot by any fair intendment be held to embrace the enlarged canal commenced in 1838, but must be confined to the canal as it then existed with perhaps such improvements as were then contemplated. This is putting the claim for damages upon a firm and tangible basis, and if the only reservations of power to limit, control or resume the waters leased are those last above quoted and recited in the lease, it would be difficult (admitting the right to use the waters during the suspension of canal navigation) to deny that the right of the claimants had been infringed in the exclusion of the water while performing the work of enlargement. But the lease on its face is declared to be made "in pursuance of the provision of the act entitled 'An Act covering the Erie and Champlain canals,' " passed April 20th, 1825, and the whole argument rests in the omission to recite fully in the lease the reservation which that act expressly requires to be inserted therein.

The words of the act above quoted on this point are, "Reserving, however, in the lease to be given the right to limit, control or wholly resume the said waters and all the rights granted by such lease, whenever in the opinion of said Commissioners or of the Legislature the safety of such canals or works or the necessary supply of water for the navigation of any canal which now is or hereafter may be constructed by the authority of the State under such limitation, control or resumption is necessary."

It cannot be denied that the enlargement, whether it be regarded as a mere improvement of the old or the construction of a new canal, was constructed by the authority of the State, nor that the limitation imposed upon the use of the waters by the lessees was rendered necessary in order to procure the supply of water for the enlarged canal. If, then, the reservations contained in the act had been faithfully transcribed into the lease, the claims would have no foundation whatever, for the right to limit

the water, as exercised, would have been within the express terms of the lease and backed by an express covenant that no damage or compensation should be paid or allowed.

It cannot be presumed that the omission in the lease, in view of the high character of the Commissioners who signed it and the eminent political standing as well of the distinguished gentlemen who became the assignees of the lessees, was anything but accidental. Neither do I think it material. The act was the only authority of the Commissioners to make this lease, by that in express terms they were empowered to make it only with the reservations therein prescribed. The act was a public act of which the lessees were not only by law bound to take notice, but it was also referred to in the lease itself and the grant on its face declared to be made in pursuance of its provisions. It is, moreover, a well established and universally recognized principle of law that all persons dealing with public agents are bound to know the scope, extent and limit of their power and that the public are not bound by the act of an agent in excess of his authority. Story says (Story on Agency, p. 307-a): "And there is no hardship in requiring from private persons dealing with public officers the duty of inquiring as to their real or apparent power and authority to bind the government." Judge Cowen, in *ex parte Miller*, above cited, speaking of a lease of surplus water under this act of 1825, says: "Here is a lease subject in express terms to a total nullification by the opinion of the lessor's agents, without the lessors being subject to damages or liable to make compensation. There is nothing in the deed itself calling for damages, but the express contrary. It goes even further than was necessary, for the mere provision to resume would by its own sense have cut off all claim to compensation. One may learn this, I should suppose, if authority were necessary, from any book which treats on the construction of contracts." *Quod sub certa forma concessum vel reservatum est non trahitur ad valorem vel compensationem* (Bac. Max. Reg. 4).

Bacon adds: "The law permitted every man to part with his own interest and to qualify his own grant as it pleaseth himself and therefore doth not admit of any allowance or recompense

if the thing be not taken as it is granted." Speaking of a right of common, he says: "It may be so framed that the grantors may avoid it altogether or qualify it or indeed prevent it taking effect at all." He says: "He shall make void his own grant rather than this certain form of it should be wrested to an equity of valuation."

The merely nominal rent reserved in this lease is a circumstance where the great value and magnificent description of the water power lease is considered to show that the chances of limitation, control or resumption without compensation were not regarded by the parties, when the lease was made, as so remote as not to effect the value of the grant. But it is enough that the act complained of is within the express terms of the reservations in the statute and that if the Commissioners made or intended to make any lease in excess of their authority, it is a fraud upon the State and simply void and the State is in no wise liable therefor.

The claimants stand here in the same position as their grantors, the original lessees having as against the State the same rights, neither more nor less, and entitled to demand or receive no more than their grantors would have been entitled to had no such lease or assignment been made.

By Mr. Denniston:—

This Board having heard the claims of Lyman A. Spaulding, William P. Daniels and Willard J. Daniels, John Jackson and George S. Douglass, John K. Gridley and George H. Elliott and the Niagara Manufacturing Company, under chapter 414 of the Laws of 1860, entitled "An Act in relation to the surplus waters of the canal at Lockport and the lessees thereof," and having fully considered the same; therefore

Resolved, That in the opinion of this Board the State is not legally, equitably or justly liable to pay the damages claimed by said persons under said law, and that therefore the same be disallowed, for the reasons stated in the opinion of the Attorney-General in these cases and so far as the powers of the Board are concerned; also, in the opinion of the Attorney-General in the case of Luther Wright, Oswego.

In calling the ayes and noes the resolution was adopted by the following vote:

Ayes — Messrs. Campbell, Denniston, Dorsheimer, Myers, Skinner, Richmond — 6.

Noes — 0.

Labor Law — Eight Hour Law.

Hours of labor for employees of Empire Engineering Corporation,
under contract with the State of New York.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 10, 1907.*

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your favor of September 5th, requesting further opinion relative to the employment by the Empire Engineering Corporation, the contractor engaged in the execution of Contract No. 1, of laborers, workmen and mechanics for more than eight hours a day, and in which you refer to that portion of my opinion sent you on that subject September 3, 1907, in which I stated that "I cannot undertake to specify every item of such work so included within the provisions of the Eight Hour Law, but it is a subject which is within the knowledge of the State Engineer, and I think that, under the terms of the contract, he is the judge of whether such work comes fairly within its terms."

You asked specifically in your former communication, "whether the contractors would be within their rights if they were to permit laborers, workmen and mechanics to work more than eight hours per day on work which, even if necessary or incidental to the performance of the contract, is not work contemplated by the contract or specifications, as, for instance, superintendent's office, store room force, men loading coal from dredge, making additions to plant such as rebuilding scows, etc., general repairs on scows and dredges, store room and repair yard watchmen, unloading car of gasoline, getting sounding boat and taking soundings, etc."

In my opinion above referred to, having in mind the specific class of work mentioned by you, I stated that:

“All work which is necessary, incidental to or connected with the execution of the contract, and which is performed by laborers, workmen or mechanics, is included within the terms of the contract, and the contractor is not authorized to employ such laborers, workmen or mechanics upon any of such work more than eight hours a day, except in cases of great emergencies, caused by fire, flood or danger to life and property; that all such work covered by, and which can be fairly said to have been included within the amount of the bid and the contract, is work which is covered by the provisions of the Eight Hour Law.”

I endeavored to lay down a general rule applicable to all laborers, workmen or mechanics employed by any contractors doing work for the State, and it seems to me that the rule thus laid down covers the various classes of work specified in your letter.

It was the manifest intention of the people and of the Legislature to prohibit the employment of laborers, workmen or mechanics longer than eight hours in any calendar day, either by the State, a municipal corporation or contractors engaged in the performance of State or municipal work, and the employment of such laborers, workmen or mechanics longer than eight hours a day upon any work incidental to or necessary to its complete performance by the State, a municipal corporation, contractors or subcontractors, cannot be required or permitted.

The Empire Engineering Corporation, by its contract, agreed “to furnish all work, labor and services and material, of every kind, and to do and perform each and every act and thing necessary or proper for the improvement * * * in accordance with the plans and specifications for said work.”

An inspection of the plans and specifications shows that they do not give the details of the manner in which the work shall be executed or the exact methods or implements that shall be employed therein.

I assume that every contractor, in making bids upon plans and specifications, takes into consideration every item of expense that he may incur and every possible contingency that may arise during the progress of the work, and includes the expense thereof in his bid.

As I said before, I cannot undertake to specify every item of such work which may be included in the performance of such a contract, for the reason that I have not the technical knowledge which enables me to determine whether a particular item of work is or is not necessary or incidental to the performance of the contract. But it seems to me that such work as making repairs to scows and dredges and loading or unloading coal and gasoline, getting sounding boats and taking soundings, the employment of watchmen to guard the store room and yards of the contractors, are necessarily incidental to the work of executing the contract; that the contractor knew, when making his bid, that such employees would be necessary and estimated the expense thereof, and included it within his bid.

In the event of the failure of the contractor to properly perform his contract, the Canal Board, upon that fact being certified to it by the State Engineer, has the power to rescind the contract and direct the Superintendent of Public Works to complete it, and if, in the completing of the work, the Superintendent of Public Works found it necessary to employ laborers or workmen in his office, store room, for loading or unloading coal or gasoline, or making general repairs on scows and dredges, or as watchmen in the store room and repair yard, he would be authorized to employ such laborers or workmen only eight hours a day, and the cost of such work would be a proper item to charge the contractor with, in ascertaining his liability to the State by reason of his failure to perform the contract.

The State Engineer must necessarily determine whether or not the class of work mentioned by you is necessary and incidental to the performance of the contract, whether included within the plans and specifications or not.

In my opinion, every item of work performed by a laborer, workman or mechanic on any work of the State or a municipality, whether performed directly by the State or municipality or by

contractors, and which is paid for by the State or municipality, must be performed by laborers, workmen or mechanics working not more than eight hours a day.

The contractor has agreed that he will not employ his workmen more than eight hours a day. The State had a right to prescribe the terms upon which it would let the contract, and the contractor having accepted it, is bound to perform in accordance with its provisions.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Highway Law — Bridges.

Repair of bridge over mill pond at Ancram. Right of Highway
Commissioner to draw water from pond and make repairs.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 17, 1907.*

L. B. HARRISON, Esq., *Division Engineer, State Hall, Albany,*
N. Y.:

Dear Sir.— I have your inquiry as to the powers of the Commissioner of Highways in the town of Ancram, Columbia county, in reference to repairs to bridge in that town.

The facts, as I understand them, are as follows: The bridge in question is of masonry, built upwards of fifty years ago, crosses a mill pond and forms a portion of one of the public highways of that town. It has become necessary to repair or rebuild the piers of this bridge, and the highway commission has notified the mill owner, who maintains the mill pond and the dam which forms the pond, to draw the water from the pond and restore the stream to its natural condition for a period long enough to make the necessary repairs. This the mill owner

refuses to do, and the question is as to the rights of the commissioner of highway in the premises.

By statute, the commissioners of highways have the care and superintendence of highways and bridges in their several towns, and it is their duty to keep such highways and bridges in repair. (Section 4, subdivision 1, Highway Law.) *Cooke v. Harris*, 61 N. Y. 455; *Re Rochester Electric Railway Co.*, 123 N. Y. 357.

The public has an easement in the use of the highways and all other uses are subordinate to this public use, and no person has any right to use the highway or any portion thereof, so that it will in any way interfere with the use of the public. This public use includes the right to keep the highways in safe and proper condition. It would seem, therefore, that the right of the mill owner in the case in question to occupy any portion of this highway, either laterally or vertically with the water of his mill pond is subordinate to the right of the public to maintain the bridge crossing such pond in proper condition and repair.

It has been repeatedly held that public officers lawfully employed in making public improvements, are not liable for consequential damages unless caused by misconduct, negligence or unskillfulness.

I am of the opinion that if it be necessary to draw the water from this pond to make the repairs to this bridge the commissioner of highway may cause same to be done for so long a time as may be necessary to complete such repairs, using reasonable diligence in effecting the same, and neither the commissioner nor the town will be liable therefor.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Barge Canal Law.

Pollution waters of Onondaga Lake by Solvay Process Company.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 24, 1907.*

HON. FREDERICK SKENE, *State Engineer and Surveyor, Albany, N. Y.:*

Dear Sir.—I am in receipt of your favor of September 16, 1907, inclosing a copy of a letter from the Superintendent of Public Works to you, dated September 11, 1907, in which he called your attention to the pollution of the waters of Onondaga Lake by the Solvay Process Company, at Solvay, N. Y. You ask me to advise you what authority, if any, the State may have under the Barge Canal Act, to restrain the Solvay Process Company from dumping their refuse into said lake.

It is the established law of this State that the title to lands under navigable waters is in the State. Onondaga Lake is one of the navigable waters of the State, and the State has always exercised jurisdiction over it in the same manner and to the same extent as it has over the other lakes and streams in the State. (Smith et al. v. City of Rochester, 92 N. Y. 463; People ex rel. Burnham v. Jones, 112 N. Y. 606.)

In the case of Ledyard v. Ten Eyck (36 Barber 102), the Court said:

“By our present statute the Commissioners of the Land office may grant land under navigable lakes and rivers when necessary for commerce, or proper for the purpose of beneficial enjoyment of the same by the adjacent owner; * * * The State is trustee for the public, of the land under water in navigable lakes and rivers, so as to protect navigation and prevent hindrances or obstructions.”

The Penal Code, section 385, defines a public nuisance as

“A crime against the order and economy of the State and consists in unlawfully doing an act or omitting to perform a duty, which act or omission * * *.”

3. Unlawfully interferes with, obstructs or tends to obstruct or render dangerous for passage, a lake or navigable river bed, stream, canal or basin, or a stream, creek or other body of water which has been dredged and cleared at public expense, or a public park, square, street or highway."

Section 392 of the Penal Code provides that

"A person who throws or deposits gas-tar or the refuse of a gas house or gas factory, or offal refuse, or any other noxious, offensive or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor."

The Legislature, by chapter 147 of the Laws of 1903, has specifically appropriated the outlet of Onondaga Lake, and Onondaga Lake itself, or at least a considerable portion thereof, for the purposes of the barge canal.

The operations of the Solvay Process Company in dumping refuse and noxious and offensive substances, polluting the water and filling up a portion of the lake and creating new land, constitute a nuisance and create an obstruction to navigation, and are in violation of the provisions of the Penal Code hereinbefore quoted. Such operations can be restrained in an action brought by the People, and the guilty persons punished in criminal actions brought for violation of the above sections.

In a recent case decided in July, 1901, the City of Syracuse was restrained by the court in an action brought by an owner of land bounding upon Onondaga Lake, from constructing an additional sewer connecting with a creek, the channel of which had been changed so that it ran in an artificial bed to the lake; it appearing that a sewer that had theretofore been constructed and which emptied into said creek, had discharged into the lake and polluted its waters, causing deposits of refuse upon the owner's land,—the court holding that the city had no right to discharge sewage into the waters of the lake to the injury of the abutting owners.

The State having the title to the lands under the waters of Onondaga Lake below high water mark, and said lake having been

appropriated by the Legislature for the purposes of the barge canal, it is within the power of the Superintendent of Public Works and the State Engineer and Surveyor, to prevent obstructions being placed in said lake, or the waters thereof being polluted. Notice should be served upon the Solvay Process Company to forthwith discontinue its operations in polluting the waters of the lake, and filling it by depositing refuse matter, and in the event of the failure of such company to so discontinue its operations, such actions either civil or criminal should be commenced in the name of the People against the said company, to restrain or punish it for its violation of the law.

Yours truly,
WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law.

Construction farm bridge across Champlain Canal at Bartholomew road, Whitehall.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 2, 1907.*

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your favor of September 24, 1907, enclosing copies of letters of D. B. La Du, Assistant Engineer and a blue print, relating to a bridge across the canal at the Bartholomew road, south of Whitehall, in which you ask an opinion as to whether or not the State is required to build a bridge over the improved canal at the point indicated on said blue print.

It appears from your letter and the blue print that there is a bridge across the old Champlain canal, erected by the State upon a highway of the town and that such bridge is used by only two persons. That the Champlain canal follows a new location in

this vicinity and crosses the above-mentioned highway and intersects the farm of David Bartholomew, and that a large portion of his farm will be rendered inaccessible to him unless a bridge is constructed in this highway over the new barge canal.

It will be necessary for the State to maintain the present bridge over the old Champlain canal so long as the State shall continue to be the owner of the old canal.

Section 3 of chapter 147 of the Laws of 1903 provides that,

“New bridges shall be built over the canals to take the place of existing bridges wherever required or rendered necessary by the new location of the canals. All fixed bridges and lift bridges when raised shall have a clear passage way of not less than fifteen and a half feet between the bridges and the water at its highest ordinary navigable stage.”

There is no other provision of the law relating specifically to the building of bridges over the new barge canal.

Chapter 147 of the Laws of 1903 provides generally for the improvement of the Erie, Oswego and Champlain canals, and under the statute the State Engineer and Canal Board are authorized to build such structures as may be necessary in their judgment in the making of such improvements. The location and building of all bridges is by the statute left entirely within the discretion of the State Engineer and the Canal Board. There is no provision of the law by which the State is required to build a farm bridge over the new barge canal to enable a land owner having lands on both sides thereof to cross the same, and it is for the Canal Board to determine whether or not in any particular case a bridge shall be built to take the place of an existing bridge, or whether or not a bridge shall be constructed over any road or highway, where the canal follows a new location. The question of the necessity or expediency of building a bridge at any particular point is left to the Canal Board to determine. The question of the original cost of the bridge and the cost of its future maintenance should be taken into consideration, and also the

amount of damages that the State may have to pay by reason of the abandonment of a bridge or the intersection of lands by a new canal, rendering a portion of them inaccessible. Compensation must be paid to the owners of lands for such portions of their lands as are taken and such damages as they may sustain by reason of the remainder of their lands being less valuable than before such portions were taken. The Court of Claims has in recent cases held that where a portion of a man's lands has been cut off and rendered inaccessible, that he is entitled to recover as his damages practically the entire value of the lands so cut off.

The questions submitted to me have already been fully covered in the opinions of the Attorney-General heretofore rendered, at your request, on July 19, 1907, and August 6, 1907, to which your attention is again called.

It is for the Canal Board to determine whether or not a bridge should be built over the canal for the accommodation of Messrs. David Bartholemew and Peter Kinner.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law.

Bridge at Baldwinsville. State Engineer authorized to construct of sufficient capacity to meet traffic requirements.

(See Opinion Aug. 2, same subject.)

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, October 17, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your favor of the 9th instant and also of a communication from William Nottingham, Esq., representing the Syracuse, Lake Shore and Northern Railway

Company, relating to the proposed bridge which will be required to be built over the barge canal at Syracuse, Baldwinsville, in which my attention is called to the opinion sent you August 2, 1907, relating to the building of such bridge.

As stated in your letter of the 9th instant and also in the letter of Mr. Nottingham, at the time of sending you the above opinion I was of the impression that the new bridge was to take the place of an existing bridge across the canal at Syracuse street, and my opinion was based upon that assumption.

As stated in that opinion "Chapter 147 of the Laws of 1903 makes it the duty of the State Engineer to prepare plans and specifications for the new barge canal including all necessary structures in connection therewith, which plans must be approved by the Canal Board. In the building of bridges over the barge canal such bridges should be provided as, in the judgment of the State Engineer and the Canal Board, public necessity requires."

In determining the character of a bridge to be built over the new barge canal the State Engineer and the Canal Board have full authority to take into consideration the nature and character of the traffic to be accommodated and to make provision for its accommodation whether such traffic be of pedestrians, vehicles or street surface railways.

The Syracuse, Lake Shore and Northern Railway Company having been, I assume, duly authorized to construct its railroad in Syracuse street in the manner as stated by yourself and Mr. Nottingham and the construction of the barge canal necessitating the construction of a bridge at Syracuse street, the State Engineer and Canal Board would be authorized to construct a bridge of sufficient capacity to accommodate a double track railroad, and to carry the cars of a railway company of the weight indicated or such as are adapted to present transportation requirements if, in the judgment of the State Engineer and the Canal Board, such a bridge is required to accommodate the public.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Barge Canal Law.

Appropriation by State Engineer of island in Mohawk river, Saratoga county. Question regarding ownership.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, November 27, 1907.

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—I am in receipt of your favor of November 22, 1907, with which you transmit correspondence and report relative to an island in the Mohawk river, county of Saratoga, which the State is desirous of taking for barge canal purposes. You inquire what proceeding should be taken in order to acquire this property, the question of ownership being in dispute and a subject of controversy in the courts.

I am of the opinion that you should follow the ordinary course of procedure provided for by the Barge Canal Law, and that the Superintendent of Public Works should serve a copy of the appropriation map, with the usual certificates of filing and a description of the property, upon all persons who claim to be owners thereof. From the memoranda relating to the title which you inclosed, it would appear that Bryce E. Morrow, Harriet Tripp, The Schenectady Illuminating Company and Ellen Tripp, have now, or formerly had the record title to said premises, and I would think it advisable that a copy of the appropriation map, etc., should be served upon each of said persons, and that a notice addressed to all the parties to the action commenced by Bryce E. Morrow, should be filed in the county clerk's office, together with the appropriation map, certificate of filing and description of the property, which the Superintendent of Public Works files in the county clerk's office in such cases. I think that such notices will be sufficient, and the question to whom payment shall be made can be determined either by the Board of Special Examiners and Appraisers, or the Court of Claims.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Barge Canal Law.

Tonawanda creek improvement. Widening and deepening of channel.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE.

ALBANY, *December 19, 1907.*

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—Replying to your request of the 9th inst. for the construction of the following paragraph of chapter 740 of the Laws of 1905, amending chapter 147 of the Laws of 1903, which provided for the improvement of the canals:

“In the rivers and lakes, the canal may have a minimum bottom width of two hundred feet and shall have a minimum depth of twelve feet; the minimum cross section of water may be twenty-four hundred square feet.”

You inquire especially as to the application of that provision to the improvement of that part of Tonawanda creek where it has a minimum width of one hundred and twenty-five feet; a maximum width of two hundred and seventy feet and an average width of one hundred and ninety feet. The act of 1903 (section 3), had provided as follows:

“In the rivers and lakes, the canal shall have a minimum bottom width of two hundred feet, a minimum depth of twelve feet and minimum cross section of water of twenty-four hundred square feet.”

The original, as well as the amended act, provide that the canals as improved in regular canal sections, shall have a minimum bottom width of seventy-five feet and a minimum depth of twelve feet and a minimum water cross section of eleven hundred and twenty-eight square feet, except at aqueducts and through cities and villages. The fact that this stream is commonly called a creek should not control in determining whether it answers to the term “river,” as used in this statute. The part of the stream,

in question here, now forms part of the course of the existing Erie canal. At all points where its channel is to be further widened and deepened, this stream is more than seventy-five feet wide, and therefore, wider than the regular canal sections are to be made. You inform me that the channel of canalized streams being subject to natural floods, are liable to fill in with flood deposits in a manner not to be anticipated in the regular canal sections. This may be taken as one reason why it might be necessary to provide for a channel in such stream wider than the regular canal sections.

In my opinion, the terms "rivers and lakes" refer to those natural waters to be canalized, which, in general, are wider than the regular sections are to be, that is, over seventy-five feet. The language of the original act positively required a minimum two-hundred-foot width; a minimum twelve-foot depth and a twenty-four-hundred-square-foot minimum cross section at all such points. The amendment retains the positive requirement for the twelve-foot minimum depth, but makes the minimum bottom width of two hundred feet and the minimum cross section of twenty-four hundred square feet, permissive. That does not mean, however, that the bottom width may not exceed two hundred feet, for, in passing through lakes, a greater ready-made bottom width may be found and the same is true as to the twelve-foot depth. But the language does carry the implication that where excavation is necessary, it shall not be unnecessarily carried beyond a minimum width of two hundred feet. Nor does the language mean that the bottom width could not be less than two hundred feet, for, if so, then in the canalizing of narrow streams, like Wood creek, a width actually unnecessary might have to be excavated.

I conclude that the amendment as to width was changed by use of the word "may" in order to permit the construction to be adapted to the particular conditions met with in streams or lakes. The elastic provision as to the cross section conforms therewith. If these conditions require a two-hundred-foot bottom width to be obtained by excavation, the statute expressly authorizes it. If the conditions will allow of a narrower channel, but one sufficiently wide to accommodate boats adapted to the regular seventy-five feet canal sections, the statute permits that as well as a

width of over two hundred feet at particular stations where conditions may so require. When the word "shall" was changed to "may," the word "minimum" practically lost its force, even though retained in the text of the act. Both the original and amended statutes, by positive language, require the twelve-foot minimum depth of channel. You state that according to recorded observations of the water of Niagara river at its junction with Tonawanda creek and controlling over the water level of the latter stream, the depth of eleven feet nine inches once in two years, of eleven feet six inches once in six years, and of eleven feet three inches once in eight years, may be anticipated on the basis of the plans upon which this stream is now being dredged. Inasmuch as the statute also prescribes that the canals as improved shall have a minimum depth of twelve feet in regular sections, it seems to me that the depth to be reached in the canalized portions of streams and lakes should be, unless at aqueducts and through cities and villages, twelve feet, based upon the lowest water levels of which authentic observation has been made.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law.

Change of route of Black River canal. Whether expense can be paid for under Barge Canal appropriation.

(See Opinions June 1, 1905 and October 10, 1906.)

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 31, 1907.*

Hon. W. R. HILL, *Special Deputy State Engineer, Albany, N. Y.:*

Dear Sir.—Replying to your communication of December 16, 1907, asking for opinion whether the building of two miles of the Black River canal in place of the part of that canal submerged by the construction of the storage reservoir on the upper

Mohawk river, near Delta, can be paid for under the barge canal appropriation, or whether the expense must be borne by the Department of Public Works.

In order to make the improvement to the Erie canal and construct the reservoir required by the statute, chapter 147 of the Laws of 1903 as amended by chapter 740 of the Laws of 1906 and chapter 710 of the Laws of 1907, it is necessary to change the route or location of the Black River canal. This necessary change is a part of the barge canal improvement and in my opinion should be paid for by the funds provided for that purpose under the barge canal appropriation. See Report of Attorney-General for 1905, page 267, also see Report of Attorney-General for 1906, pages 361-362.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE CANAL BOARD.

Barge Canal Law.

Contract No. 6, proposed alterations, etc.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 10, 1907.

To the Honorable, the Canal Board of the State of New York:

Gentlemen.—Complying with the request at the last meeting of your Honorable Board for my opinion upon the question arising as to proposed Alteration 3, Contract 6, for the improvement of the Erie canal:

Pursuant to chapter 147, Laws of 1903, Contract 6 was entered into on the 3d day of May, 1905.

“For the excavation of the canal from Station 2,571, just south of Buffalo road, west of Rochester to Station 2,744, near South Greece, and the protection of its banks, the construction of foundations and abutments of bridges at Buffalo road, Lyell avenue, Niagara Falls branch of New York Central and Hudson River Railroad, Lee road and Spier's Bridge road, and incidental work as shown on plans. Length, 3.28 miles.”

The contractor's itemized proposal contained this bid for excavation:

“1,980,000 cu. yds. all excavation, 46¼ cents, \$920,375.”

The proposed alteration is for the purpose, as set forth in the resolution offered by the State Engineer, of

“Modifying the plans for said contract, so as to provide for a flatter slope to the canal prism, necessitated by the fact that from a point at about Station 2,653, where the

New York Central Railroad crosses the line of the canal where the rock runs out in the excavation, it was found that the rock was so soft that it would be necessary in order that the sides of the canal would stand to excavate to a flatter slope at the stations mentioned in detail in said statement and description."

This change will necessitate additional excavation, estimated to be 100,000 cubic yards, and the question is as to how it shall be done and paid for.

Section 6, of chapter 147 of the Laws of 1903, provides:

"* * * No alteration shall be made in any such map, plan or specification, or the plan of any work under contract during its progress, except with the consent and approval of the Superintendent of Public Works and the State Engineer, nor unless a description of such alteration and such approval be in writing and signed by the parties making the same and a copy thereof filed in the office of the State Engineer. No change of plan or specification which will increase the expense of any such work or create any claim against the State for damage arising therefrom, shall be made unless a written statement, setting forth the object of the change, its character, amount and the expense thereof, is submitted to the Canal Board and their assent thereto, at a meeting when the State Engineer was present, is obtained. No extra or unspecified work shall be certified for payment unless said work is done pursuant to the written order of the State Engineer, and payment therefor shall not be made unless approved by the Canal Board."

Section 7 of the same act provides:

"If at any time in the conduct of the work under any contract, it shall become apparent to the State Engineer that any item in the contract will exceed in quantity the Engineer's estimate by more than fifteen per centum, he shall so certify to the Canal Board, and the Canal Board shall thereupon determine whether the work in excess thereof shall be completed by the contractor under the terms and at

the prices specified in the contract, or whether it shall be done or furnished by the Superintendent of Public Works, or whether a special contract shall be made for such excess in the manner above prescribed."

Section 9, article VII. of the State Constitution, provides:

"No extra compensation shall be made to any contractor, but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the Canal Board may, upon the application of the contractor, cancel such contract."

The pertinent clauses of the contract are:

Clause 7. "It is mutually agreed that the State reserves the right until the final completion and acceptance of the work to make such additions to or changes in the plans and specifications covering the work as may be necessary, and the contract shall not be invalidated thereby, and no claim shall be made by the contractor for any loss of profits because of any such change."

Clause 8. "The contractor agrees that he has satisfied himself by his own investigation and research regarding all the conditions affecting the work to be done and labor and material needed, and that his conclusion to execute this contract is based on such investigation and research, and not on the estimate of the quantities or other information prepared by the State Engineer, and that he shall make no claim against the State because any of the estimates, tests or representations of any kind affecting the work made by any officer or agent of the State, may prove to be in any respect erroneous."

Specification 3. "These specifications and the accompanying plans are intended to require and include all work and material necessary or proper for the work contemplated. In case by inadvertence or otherwise, the plans or specifications omit to require some work or material necessary for that purpose, the contractor shall, nevertheless, be required to provide the same so that the work may be complete according to the true intent and purpose of the plans and specifications."

Specification 18. "Excavation shall consist of the loosening, loading, transporting and depositing of all material, wet or dry, of every name and nature necessary to be removed, for the purpose of forming the canal prism, ditches, pits for structures, for obtaining materials from borrow pits, for re-excavating material previously stored in spoil banks, or for any other purpose necessary to complete the works under contract."

Specification 21. "Excavation shall be made only to such lines and grades as are shown upon the plans or as may be fixed from time to time by the Engineer."

The provisions of the contract quoted permit changes in the plans and specifications which will diminish the quantities without invalidating the contract or allowing any recovery for loss of profits.

The contractor is bound to do all the work incidental to the performance of the contract according to the plans and specifications, and all work required by and incidental to such changes and additions in the plans and specifications as the State authorities may from time to time deem necessary. This would be subject to a reasonable construction which would limit the obligation to such changes and modifications as would not alter the general character of the work.

These questions must be determined from the facts in each case, but generally, changes in excavation such as altering the slope of walls, widening and deepening, which simply amount to an increase of quantities under substantially the same conditions as under the original plans and specifications, must be done at the contract rate of compensation.

The proposed alteration must have the consent and approval of the Superintendent of Public Works and the State Engineer.

If the work has not already been done under the original plans, it may be that the expense of the additional excavation will not exceed the saving effected in "channeling" or other special form of construction. But if the change will increase the expense of the work, it must have the assent of the Canal Board. If the increase

exceeds fifteen per cent. of the original estimate, the Canal Board has the discretion set forth in section 7, of the act above quoted.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Barge Canal Law.

State should not incur additional expense by change in original plans for deepening locks, etc.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 4, 1907.

To the Honorable, the Canal Board of the State of New York:

Gentlemen.—I have examined carefully into the matter of the proposed changes in the original plans for canal improvement, relating to the depth of locks, and am of the opinion that such changes may not be made without violating the spirit and intent of chapter 147 of the Laws of 1903, entitled "An act making provision for issuing bonds to the amount of not to exceed \$101,000,000, for the improvement of the Erie canal, the Oswego canal and the Champlain canal, and providing for a submission of the same to the people, to be voted upon at the general election to be held in the year 1903."

While it is true that this act does not specifically provide against the adoption of plans for the construction of locks fourteen feet in depth, nevertheless a fair interpretation of the act would seem to prohibit any such radical departure from the original plans.

The act provides for an issue of bonds, not to exceed \$101,000,000. There can be no absolute certainty at this time that unforeseen contingencies, such as extra work and increased cost of labor and material may not require the expenditure of the total proceeds of the sale of these bonds in the completion of the work as originally contemplated.

For that reason, material changes in the plans, entailing additional expense, might affect the validity of the bonds and thus upset the whole scheme of canal improvement.

I have considered the matter purely from a legal viewpoint, but the question of the necessity and advisability of the proposed change ought also to be taken into account. As I understand it, an increased depth of the locks will serve no useful purpose unless there is a correspondingly increased depth in the prism of the canal, and I do not believe the State has any right to incur large expense at this time for work which can only be justified on the theory that, at some future day, the people may make provision for canals of greater capacity than is contemplated in the act of 1903.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Barge Canal Act.

Contract No. 4, Alteration Agreement No. 2, east end of Oneida Lake at Sylvan Beach.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 24, 1907.*

To the Honorable, the Canal Board of the State of New York:

Gentlemen.—There has been transmitted to me in accordance with the directions of the Canal Board, at a meeting held August 28, 1907, for my examination and opinion, Alteration Agreement No. 2, of Contract No. 4, for the improvement of section 5, of the Erie canal. Original Contract No. 4, is “for the construction of the canal and its appurtenances from foot of Lock 25 to deep water, east end of Oneida Lake at Sylvan Beach. Length equals 4.83 miles.”

Accompanying the proposed Alteration No. 2, submitted to me, is a “Statement and Description of an Alteration in the maps, plans and specifications of Contract No. 4,” as follows:

"After the commencement of the work of construction, conditions developed which make a change in plans necessary. These conditions arise chiefly from the following:

"1st. It was found that the material through which the canal extends (composed largely of sand) will not stand on such steep slopes as assumed, but will require flatter slopes.

"2d. A change in the location of canal to the east of this contract has been made shifting the center line 250 feet to the north of its former location.

"The changes necessary on account of the flatter slope assumed by the material, are as follows:"

This statement gives in detail the changes proposed and the reasons therefor and the necessity for the elimination of part of the work provided for in the original contract and of the additional work required to carry out the contemplated changes.

From an examination of the original contract and of the proposed alteration agreement and from information obtained through the Special Deputy State Engineer and the Superintendent of Public Works, it appears that there is no material change of plans proposed and that the general character of the work will not be altered. That the proposed changes are in the location and side slopes of the canal and are such as are incidental to the performance of the contract and as might reasonably be expected by the State as well as the contractor to be made during the progress of the work.

Paragraph 7 of Contract 4 provides:

"It is mutually agreed that the State reserves the right until the final completion and acceptance of the work to make such additions to or changes in the plans and specifications covering the work as may be necessary and the contract shall not be invalidated thereby, but an allowance or deduction in the manner specified in chapter 147 of the Laws of 1903 aforesaid and as hereafter more particularly specified, shall be made for such additions or changes and not otherwise and no claim shall be made by the contractor for any loss of profits because of any such change or by reason of any variation between the quantities of the approximate estimate and the quantities of the work as done."

Section 7 of chapter 147 of the Laws of 1903 provides:

"If at any time in the conduct of the work under any contract it shall become apparent to the State Engineer that any item in the contract will exceed in quantity the engineer's estimate by more than fifteen per centum, he shall so certify to the Canal Board and the Canal Board shall thereupon determine whether the work in excess thereof shall be completed by the contractor under the terms and at the prices specified in the contract, or whether it shall be done or furnished by the Superintendent of Public Works or whether a special contract shall be made for such excess in the manner above prescribed."

Item 3 of the specifications, provides:

"These specifications and the accompanying plans are intended to require and include all work and material necessary or proper for the work contemplated. In case, by inadvertence, or otherwise, the plans or specifications omit to require some work or material necessary for that purpose, the contractor shall nevertheless be required to provide the same so that the work may be complete according to the true intent and purpose of the plans and specifications."

The proposed alteration No. 2 in the contract is not a change in the character of the work, but a change in and an addition to the plans and specifications and in the method of performing the work made necessary, as stated by the Engineer in the proposed alteration, to meet conditions which have developed during the progress of the work and of the character specified in paragraph 7 of the contract, and which the Canal Board has the right and authority to make and the contractor is required to perform.

The prices for furnishing the materials included in Items 11, 14, 16 and 22 of the proposed alteration agreement, are the same as the prices specified in the original contract for the same kind of materials.

The work specified in Items 7a, 8a and 9a, for the removal of revetment, foundation piles and concrete, is new kind of work, not covered by any of the specifications of the original contract, and a fair and reasonable price for doing such work can be agreed upon by the Canal Board and the contractor.

All of the other items mentioned in the alteration agreement provide for the performance of work and the furnishing of materials of the same kind required by, and for which the original contract fixes the prices.

Items 10a, 11a and 15a are for excavation and the prices proposed to be paid for such work are 30 cents, 75 cents and 18 cents per cubic yard respectively. The contract price for doing all excavation is 14 cents per cubic yard, and the prices for these items are largely in excess of the prices for doing the same kind of work as specified in the original contract. This would be making extra compensation to the contractor, which is prohibited by section 9 of article 7 of the State Constitution, which provides:

“No extra compensation shall be made to any contractor.”

Additional compensation is likewise made by the alteration agreement in the increased prices to be paid for furnishing foundation piles and for first and second class concrete and for forms and extra labor in making forms used in the concrete work and is subject to the same objection.

The Canal Board has no power to enter into the alteration agreement in its present form, but is authorized to make an alteration agreement with the contractor to perform the work made necessary by the additions to and changes in the work of making the improvement specified in Contract No. 4 at such prices for new work, which was not provided for or covered by the original contract, as are fair and reasonable and for work of the same character as that specified in the original contract at the same prices for which the contractor agreed to perform such work. The opinion of the Attorney-General to the Canal Board, June 10, 1907, relating to proposed alteration of Contract No. 6, in which I decided that “changes in excavation such as altering the slope of walls, widening and deepening, which simply amount to an increase in quantities under substantially the same conditions as under the original plans and specifications, must be done at the contract rate of compensation,” is called to your attention as it is applicable to the proposed alteration under consideration.

Very respectfully,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE ADJUTANT-GENERAL.

State Arsenals—Water Rents.

Liability of State for water furnished by New York city to the
New York State Arsenal.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 29, 1907.

To the Adjutant-General of the State of New York, Albany, N. Y.:

Dear Sir.—I acknowledge receipt of your favor of the 27th inst. inclosing bill rendered by the department of water supply, gas and electricity of the city of New York for water furnished to the New York State Arsenal, Seventh avenue and 135th street, New York city, amounting to \$44.00, together with a large number of accompanying papers relating to the subject and a request for the opinion of this office as to the liability of the State in the matter.

I have examined the opinions rendered by this office on the subject, under dates of June 11, 1900, April 22, 1903, December 31, 1900, May 9, 1903, December 2, 1904, May 13, 1905, July 28, 1905 and September 7, 1905, together with the various opinions of the Corporation Counsel of the city of New York, all of which papers I return herewith.

It seems to be settled by the authority of *Silkman v. Water Commissioners*, 152 N. Y. 327, that rents charged for water consumed are not in the nature of taxes and there is no apparent reason why the State should not pay for supplies of water properly furnished it, the same as for any other supplies properly furnished any of the State departments.

The only question in relation to this claim is as to whether, under all the provisions of the Military Code, the bill is properly payable by the city or county of New York. Section 133 of the

Military Code, being chapter 16 of the general laws, provides that the expense of erecting and maintaining armories should be charged against the county in which such armory is located. Section 134 of the same law provides that such expenditures in relation to armories in the city of New York shall be charged upon that city. In these sections the word "armory" only is used and no reference is made as to arsenals and the question therefore is whether the New York State Arsenal may be taken to be included in the general term "armory" as used in the statute.

I am informed that the various armories of the State are used as headquarters and drill rooms for the various organizations comprising the National Guard, as well as for the storage of arms and equipment of such organization. On the other hand I understand that the building in question, known as the "New York State Arsenal" is the only building of the kind owned by the State and is not used as the headquarters in the city of the organizations comprising the National Guard, nor for any purpose by such organization, but is used entirely for the storage of military supplies.

The Century Dictionary defines "armory" as follows:

"2. A place where arms or instruments of war are kept. In the United States the State Militias are usually provided with armories, which include also offices, drill rooms, etc.

"3. A place where arms and armor are made, an armor's shop, an arsenal."

The word "arsenal" is defined as follows:

"1. A repository or magazine of arms and military stores of all kinds.

"2. A public establishment where naval and military engines or war-like equipments are manufactured."

The Military Code above referred to uses both the words arsenal and armory in conjunction with various sections, notably sections 17, 139, 140, and in chapter 601 of the Law of 1898 relating to the same subject.

The omission of the word "arsenal," therefore, from sections 133 and 134 of the Military Code, which make the cost of the maintenance of armories a local charge, would seem to be significant of the intention of the Legislature not to make the expenses for the maintenance of the arsenal a local charge.

I am therefore of the opinion that the enclosed bill for water supplied to the New York State Arsenal is a proper charge to be made by the city to the State and should be paid by the State out of the funds available therefor.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

OPINIONS RENDERED THE STATE BOARD OF ARMORY COMMISSIONERS.

State Board of Armory Commissioners—State Armories.

65th Regiment, Buffalo. Authority of Commissioners to let contracts for the erection of, and to contract for construction of temporary approaches.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, N. Y., *January 18, 1907.*

To the Honorable, the Armory Commission, Albany, N. Y.:

Gentlemen.—Complying with your request of December 18, 1906, for an opinion upon the following questions:

"1. What is the power and authority of the Armory Commission in the letting and making of contracts for the construction of the armory of the Sixty-fifth Regiment, and such contract or contracts as are required for grading, sodding, seeding and planting, filling, excavating, draining, paving, fencing, gates, retaining walls and approaches, making sewer and water connections and laying sidewalks, tile

and concrete in, upon and about said armory and land, and for providing elevators, bath, water and wash closets and necessary construction, fixtures and fittings therefor, and the necessary apparatus, fixtures and means of lighting, ventilating, heat regulation, and additional heating?"

"2. Is any power or authority vested by law or otherwise in the board of supervisors of Erie county to make or let any contract or contracts for work to be done or materials furnished — required by the construction of the armory of the Sixty-fifth Regiment and specified in chapters 236, Laws 1900, and 393, Laws of 1904?"

"3. The armory will be ready for occupancy by the regiment about January 1, 1907. Plans and specifications for retaining wall, etc., remain in the hands of the board without action as stated above; in order that the regiment may occupy the building it is necessary to construct temporary approaches — has the Armory Commission authority to contract for this work and make requisition on the county treasurer of Erie county for its payment?"

The construction of this armory was authorized by certain special acts, to wit: Chapter 256 of the Laws of 1900 (section 2 amended by chapter 393 of the Laws of 1904), and chapter 277 of the Laws of 1900.

Chapter 256 of the Laws of 1900 provided:

"Section 1. It shall be the duty of the board of supervisors of Erie county to select and purchase on behalf of and in the name of the people of the State of New York, such selection and purchase to be approved by the Armory Commission of the State, a plot of ground in the city of Buffalo, county of Erie, suitable for the purposes of an armory for the Sixty-fifth Regiment of the National Guard, located in Buffalo, the title to which shall be taken in the name of and vested in the people of the State of New York. * * * In case said board of supervisors shall fail or refuse to select and purchase such site as herein before provided within six months after service on the chairman of said board of a written notice signed by said Armory Commission, request-

ing said board to make such selection and purchase, then and in that event it shall be the duty of the Armory Commission to select and purchase at the expense of the county such site * * *."

Section 2 authorizes and directs the board of supervisors to issue bonds of the county of Erie

"To pay the purchase price or cost of said land, together with such sums as are necessary for the cost of acquiring said title, and for grading, filling, excavating, draining, paving, fencing, making sewer and water connections and laying sidewalks about said land,"

and further provides that the proceeds of the sale of such bonds shall be retained by the county treasurer and paid out by him for such specified purposes "upon the written requisition of the Armory Commission."

"Section 3. Whenever the land above mentioned shall be purchased or the title thereto shall have been acquired in the manner aforesaid, it shall be the duty of said commission forthwith to proceed to obtain by competition or otherwise, plans and specifications for the construction of a suitable armory and drill hall and store house, including suitable apparatus for heating the same, with rifle range and kitchen and the necessary fixtures for the same. * * *. But no expenditures except for plans and specifications, the printing of notices and the expenses of said commission, shall be made * * * until a contract or contracts for the erection of such armory, drill hall and store house including suitable apparatus for heating the same, with rifle range and kitchen, and the necessary fixtures for the same shall have been executed as herein provided."

"Section 4. *Said armory, drill hall and store house, including suitable apparatus for heating the same, including rifle range and kitchen and the necessary fixtures for the same shall be erected under and pursuant to a contract or contracts to be let by said commission.* * * *. The said commission shall have the power to reject any, or all bids

for said work or materials if it shall deem it for the best interests of the State so to do and in such case shall immediately thereafter readvertise for other and further bids."

* * *

Chapter 277 of the Laws of 1900 authorizes the county of Erie, subject to the approval of the Armory Commission, to acquire the title in fee to a parcel of land therein described, and vests such title in the people of the State of New York for use as a site for an armory for the Sixty-fifth Regiment.

Section 6 of said act provides for the issue and sale of bonds and makes provision for the disposal of the proceeds of such sale as follows:

"The proceeds of the sale of said bonds shall be retained by said county treasurer and shall by him be paid *upon the order of the board of supervisors* for the compensation awarded for said land, the cost of the proceedings, the cost of land purchased and taken in any cemetery of Erie county, the cost of removal and reinterment of bodies, and the removal and resetting of monuments, slabs and stones, *and upon the written requisition of the Armory Commission* for the cost of grading, filling, excavating, draining, paving, fencing, making sewer and water connections and laying sidewalks in and about said land." * * *

Section 2 of chapter 256 of the Laws of 1900 was amended by chapter 393 of the Laws of 1904, so as to provide:

"Section 2. * * * Whenever it is certified to said board of supervisors by the Armory Commission or the commanding officer of the Sixty-fifth Regiment, National Guard, that said board is required pursuant to the provisions of this chapter or of the Military Code, to make expenditures in, upon and about said armory and land for the purposes specified in this chapter and in the Military Code, it is hereby authorized, from time to time, as may be required, to cause to be executed by its chairman and the treasurer of said county in behalf of and in the name of the county of Erie, interest-bearing bonds in the amount or aggregating

the amount required to pay the purchase price or cost of said land, together with such sums as are necessary for the cost of acquiring said title, and for grading, sodding, seeding and planting, filling, excavating, draining, paving, fencing, gates, retaining walls and approaches, making sewer and water connections and laying sidewalks, tile and concrete in, upon and about said armory and land; for providing the necessary camp stools, chairs, furniture, fixtures and furnishings, kitchen accessories and supplies, lockers, gun racks, desks, cases and shelving, elevators, bath, water and wash closets and necessary construction, fixtures and fittings therefor, and the necessary apparatus, fixtures and means for lighting, ventilating, heat regulation and additional heating."

And it further provided that the proceeds of the sale of such bonds should be retained by the county treasurer, and by him paid out for certain of the items specified therein upon the written requisition of the Armory Commission and for the remaining items upon the written requisition of the commanding officer of the Sixty-fifth Regiment.

Section 17, Military Code, provides:

"Whenever any arsenal, armory or other quarters of the militia, camp ground or rifle range, is owned by the State, the same shall be under the charge of an armory commission. * * * From the time this act takes effect, a commission so constituted shall take charge of the erection and completion of all such property as may hereafter be authorized to be erected, and of all such property, the erection or completion of which is in progress at the time this act takes effect under any general or special law." * * *

"It shall keep in good repair the arsenals, armories, quarters, camp grounds and rifle ranges, in its charge, and all moneys appropriated heretofore or which may be appropriated hereafter for the erection or repair of such buildings, grounds and ranges shall be expended by a commission so constituted in the same manner as other moneys appropriated for military or naval purposes are authorized to be expended, except as herein otherwise provided." * * *

The County Law vests no authority in and imposes no duty on boards of supervisors in the matter of armories. The armory site was purchased under the provisions of chapter 277 of the Laws of 1900, which provided that the title should be taken in the name of and vested in the people of the State. The title having been acquired, the Armory Commission was required by section 17, Military Code, to take charge of the erection and completion of the armory and under sections 3 and 4 of chapter 256 of the Laws of 1900 to procure the necessary plans and specifications and let contracts for the work.

Such being the laws applicable, your questions are respectively answered as follows:

First: As the Legislature has created an Armory Commission and directed and empowered it to take charge of the erection and completion of all armories authorized by the State to be built, and further directed and empowered such Commission to let contracts for the construction of the armory of the Sixty-fifth regiment, there being no other statute in force vesting this power in any other person or body politic, the Armory Commission has the sole power and authority to let contracts for the work specified in question.

Second: There is no authority vested by law in the Board of Supervisors of Erie county to make or let any contract or contracts for the work to be done, or materials furnished, required by the construction of the armory of the Sixty-fifth regiment and specified in chapter 256 of the Laws of 1900 and chapter 393 of the Laws of 1904. The sole authority of the Board of Supervisors to let such contracts is derived from a resolution of the Armory Commission, passed May 23, 1902, to wit:

“Resolved, That the plans and specifications for work required to be done by the board of supervisors of said Erie county shall be submitted to the Armory Commission for approval and then turned over to the board through its chairman to let contracts in such manner as they may elect, said contracts to be subject to the approval of the Armory Commission.”

This resolution was of no further effect than to constitute the Board of Supervisors the agents of the Armory Commission, but

that delegation of authority can be terminated by the Armory Commission and the resolution does not stand in the way of the exercise by the Commission of all its powers and duties as to all necessary contracts not yet entered into.

Third: The determination of the necessity for temporary approaches and the authority to contract for the construction of such approaches and to make requisition on the County Treasurer of Erie county for the payment therefor, lies with the Armory, Commission under the general authority conferred by section 17, Military Code, and the provisions of the special acts hereinbefore mentioned.

The difficulties to which your letter refers as having arisen may not be removed by the legal construction we have found necessary to be placed upon the provisions of these acts, and that construction may be disagreeable to the Board of Supervisors of Erie county, who are naturally interested in the matter of cost, as well as in the character and quality of the building and workmanship. In such event, recourse must be had to the Legislature.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Labor Law — Eight Hour Law.

State armory, Syracuse. Hours of labor for employes under contract for erection of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 13, 1907.*

Major FRANK A. MCNEELY, *Secretary, State Board of Armory Commissioners, Albany, N. Y.:*

Dear Sir.—I have your favor of the 28th ultimo, inclosing evidence of alleged violations of section 3 of the Labor Law by the M. Stipp Construction Company, contractor, engaged in erecting a State armory at Syracuse, N. Y., in allowing the men en-

gaged to work eight hours and ten minutes on each day except Saturday, when they were permitted to work seven hours and ten minutes.

In reply to your request for advice thereon, would state as follows: In November, 1904, the Court of Appeals of this State, in the case of the People ex rel. Cossey v. Grout, reported in 179 N. Y., page 417, declared the eight-hour provision of section 3 of the Labor Law unconstitutional, so far as it applied to contractors with the State or a municipality. Thereafter, and in November, 1905, the Constitution, article 12, section 1, was amended by vote of the people so as to permit the passage of an eight-hour law, and thereafter chapter 506 of the Laws of 1906 re-enacted section 3 of the Labor Law as the same now stands, being practically in the same form as it was at the time the court declared it unconstitutional, except for the insertion of the provision relating to the repair of highways outside the limits of cities and villages, which is not germane to the matter in hand. Chapter 506 of the Laws of 1906 became effective on the 19th day of May, 1906. It appears from the contract for the construction of the work, which you enclosed, that it was signed and executed on the 27th day of April, 1906, this being prior to the passage of chapter 506 of the Laws of 1906. Such being the case, the provisions of chapter 506 of the Laws of 1906 do not apply to this contract, and this will be more clearly apparent from a reference to this law, from which I quote:

“Each contract for such public work hereafter made shall contain the provision that the same shall be void and of no effect unless the person or corporation making or performing the same shall comply with the provisions of this section.”

This and other portions of the statute show that it was the intention of the Legislature that it should have no retroactive effect; and this being so, the law does not apply to the contract in question, and the acts of the contractor in allowing the men to work overtime are, therefore, not in violation of the law.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

State Armories — 65th Regiment, Buffalo.

Issue of bonds, Erie county, whether State Armory Commission may draw order on treasurer in favor of Erie county upon moneys derived from, to pay for expenses of sale of such bonds.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 11, 1907.

To the Honorable, the State Board of Armory Commissioners:

Gentlemen.—Your favor of the 9th instant received, enclosing copy of communication from the auditor of Erie county, inquiring whether it is possible for the Armory Commission to draw an order on the treasurer of Erie county, in favor of that county, upon moneys derived from a bond issue under chapter 393, Laws of 1904, providing for the erection of an armory in the city of Buffalo, to pay for the expenses of the sale of such bonds.

The statute provides that the proceeds of the sale of the bonds thereby authorized shall be retained by the County Treasurer of Erie county and paid out for certain expenses connected with the erection of such armory, upon the requisition of the Armory Commission. While no provision is made by the statute for payment of the necessary expenses attending the sale of the bonds I think it should be assumed that there is an implied power to pay the expenses necessary to carry out the directions of the statute.

If, therefore, the expenses referred to were proper and were necessarily incurred, in effecting the sale of these bonds, I think such expenses are properly payable from the proceeds thereof.

This seems to have been the view of the Court of Appeals in the similar case of *Mayor, etc., v. Sands*, 105 N. Y. 210.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE BOARD OF CHARITIES.

State Board of Charities — Charitable Institutions.

House of Good Shepherd, Utica. Whether it is compelled to receive children committed. Support, etc., a county charge.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, February 6, 1907.

HON. ROBERT W. HILL, *Acting Secretary, State Board of Charities:*

Dear Sir.—Your favor of the 14th ultimo, asking an opinion on certain questions propounded to you in a letter from Mr. Charles B. Mason of the Board of Managers of the House of Good Shepherd, Utica, enclosing a copy of such letter and articles of incorporation of that institution, is received.

In reply I inform you as follows:

From the articles of incorporation of the House of the Good Shepherd, filed February 10, 1872, it appears that the incorporators desired "to associate themselves together for benevolent, charitable and mission purposes;" also, that "the particular business and object of this society shall be the care, maintenance and instruction of friendless, neglected and destitute children of the Diocese of Central New York of the Protestant Episcopal Church, and shall be carried on in Utica, Oneida county."

The statute permitting the organization of such society was chapter 319 of the Laws of 1848, which provided that any five or more persons, citizens of the United States, might incorporate themselves for' benevolent, charitable, scientific or missionary purposes.

The first question is as follows:

"Is the House of Good Shepherd compelled to take all children who are committed to it who are not committed under the provisions of the Penal Code or the Compulsory Education Law?"

The cases referred to in the question would be those arising under the provisions of the Poor Law, section 20, chapter 225, Laws of 1896, wherein it is provided that an overseer shall by written order cause such poor person to be relieved and provided for as the necessities of the applicant may require.

Such cases might also arise under chapter 438 of the Laws of 1884, wherein it is provided by section 1 that the custody of any indigent child may be committed to any incorporated orphan asylum or other institution incorporated for the care of orphan, friendless or destitute children by an instrument in writing signed by the parents of the child and by the mayor of a city in or the county judge of the county in which such institution shall be located. While this disposition is called a commitment of the child, it is, nevertheless, one which is arranged for by contract between the officers of the institution and the parent or proper public authority, as the case may be.

Under section 2 of the same act it is provided that county superintendents and overseers of the poor, boards of charities or other officers shall provide for children between the ages of two and sixteen as paupers in orphan asylums or other appropriate institutions.

Under both sections cited the reception of the child by such institution is not made compulsory and it is undoubtedly optional with the managers of the institution to receive any such children as they may deem wise.

Your attention is also called to the fact that the Penal Code, section 291, subdivision 5, in reference to the commitment of children to any incorporated charitable, reformatory or other institution does not make the reception of children committed thereunder compulsory upon the institution. So also, section 9 of the Compulsory Education Law, in reference to the commitment of truants to orphan homes or similar institutions, does not make the reception of such children compulsory upon this institution.

Your second question is:

“Whether or not the institution named is compelled to take children from any county within the State; or if only from certain counties, then what counties?”

The terms of the articles of incorporation limit the right of the society territorially not to counties as such, but to the maintenance and instruction of friendless, neglected or destitute children of the Diocese of Central New York of the Protestant Episcopal Church.

The third question is:

“Supposing the institution is not full, can the management arbitrarily refuse admission or must they give some good reason therefor?”

It is apparent from the statute under which this institution is organized and under its articles of incorporation, that it was a purely voluntary association to subserve charitable purposes, carried on through private support, and that, therefore, its activities may properly be limited by the judgment and discretion of its board of managers. It would follow from this that its management may act upon its own judgment as to the number of inmates it will undertake to care for.

The fourth question, as to what will constitute good reasons or causes for refusing to receive children is hereby covered.

The fifth question is:

“In case a county does not pay or refuses to pay for a child who has been properly committed from that county, what are the remedies of the institution?”

If the support of any inmate received is a charge against a particular county, the audit and payment of proper bills therefor may be enforced by appropriate legal proceedings against that county.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

State Board of Charities — Hospitals.

Agreement between Board of Supervisors of Clinton county
and Plattsburgh City Hospital.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 31, 1907.

HON. ROBERT W. HILL, *Secretary, State Board of Charities,*
Albany, N. Y.:

Dear Sir.— In reply to your favor of the 15th ultimo, requesting an opinion on the legality of the action of the board of supervisors of Clinton county, in entering into an agreement for the care and surgical treatment of the Plattsburgh City Hospital of all such persons in Clinton county as are now, or *shall become hereafter* dependent and a charge upon the public, and by resolution appropriating the sum of five thousand dollars to said hospital, payment of which is contingent upon the said hospital binding itself to care for the said patients and contingent upon such action of the said board of supervisors being approved by the State Board of Charities.

The following provisions of the State Constitution bear directly upon this subject:

ARTICLE VIII, SECTION 10.

“ No county, city, town or village shall hereafter give any money or property or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law.”

ARTICLE VIII, SECTION 14.

"Nothing in the constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the State Board of Charities. Such rules shall be subject to the control of the Legislature by general laws."

Section 14 of article VIII was added to the Constitution by the Constitutional Convention of 1894, for the purpose of preventing abuses in the waste of public moneys by charitable corporations. To carry out this purpose chapter 754 of the Laws of 1895, under which boards of supervisors derive their power, was enacted.

The wording of section 14, above quoted, indicates a design on the part of the framers of the Constitution to base payments of money to private charitable corporations upon the number of inmates received and retained therein pursuant to the rules of the State Board of Charities, and thereby to prohibit appropriations for future care made without regard to the number of inmates received, or whether or not compliance should be had with the rules of the State Board of Charities. This view is sustained in the case of *Mount Sinai Hospital v. Hyman*, 92 App. Div. 270, 271, where the court held:

"It is the evident policy of the State to deal in connection with such institutions having regard to the continued discharge of the public functions and providing funds to aid in the discharge of current obligations thereby created. The

appropriation and payment of money from time to time as necessity requires enables the city at all times to control the proper application of the proceeds and to increase, diminish or withhold the amount appropriated in accordance with the needs of the institution, and fulfillment upon its part of the public obligation which it has assumed."

The resolution of the board of supervisors in question would appropriate and pay moneys of the county to the hospital without regard to the number of inmates who may be received or retained therein. There may be many or no dependent poor requiring the care of the hospital. The payment is made at the present time for indefinite future services, and the county has no security for future compliance with the rules of the State Board of Charities, or for the care of a single dependent person, except the agreement of a corporation which may cease operations before it has rendered any service under the contract.

In my opinion this does not meet the requirements of the Constitution, the intention of which was to provide for payment of services actually rendered and not to enable gifts or endowments.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE BOARD OF
EMBALMING EXAMINERS.

*State Board of Embalming Examiners.
Licenses — Undertakers.*

Powers of State Board as to revocation of license because of the licensee not engaging in the practice of business.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, February 5, 1907.

HON. WILLIAM J. PHILLIPS, *Secretary State Board of Embalming Examiners, Albany, N. Y.:*

Dear Sir.—In reply to your inquiry of the 4th instant, to wit: Has the Board of Embalming Examiners power to revoke an undertaker's license duly issued, on the ground that the licensee has not engaged in the business of undertaking in accordance with his statements on his application for license. The statute gives the Board power to revoke any license upon proof that the same was procured by fraud or that the holder thereof has been guilty of a violation of any of the statutes regulating the practice of undertaking or embalming or the rules and regulations of the Board. What the rules and regulations of the Board require, I am unable to say, as I have not been furnished with a copy; but the mere fact that a licensee has not engaged in business in accordance with the statements of his application would not of itself be sufficient ground for revoking the license, as many reasons might arise after the license had been granted why the licensee should not so engage in business.

I find nothing in the statute itself which requires a person on taking out a license to immediately begin the practice of his profession, nor do I find anything in the statute which gives the Board power to revoke the license of a licensee merely because he has discontinued the practice of his profession or business.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

*State Board of Embalming Examiners.
Embalming Law — Licenses.*

Whether licensed undertaker or embalmer from another State may practice within State of New York; rules of other States regarding practice therein of New York State embalmers.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, February 5, 1907.

HON. WILLIAM J. PHILLIPS, *Secretary State Board of Embalming Examiners, Albany, N. Y.:*

Dear Sir.—In reply to your letter of the 4th instant inquiring whether or not, under the provisions of the Embalming Law, an undertaker or embalmer from an adjoining State, licensed by the State in which he lives, can perform undertaking or embalming in this State without holding a New York State license, I would say that the statutes of this State specifically state that no person to whom a license has not been issued as prescribed by the embalming act of this State shall transact or practice, or hold himself out as transacting or practicing, the business or practice of undertaking or embalming within this State. The statute makes exceptions in respect to medical officers in the army or in the marine hospital service, or any one actually serving as a member of a resident medical staff of any legally incorporated hospital, or to any person duly licensed to practice as a physician or surgeon in this State.

In reply to your second inquiry: "Can a licensed embalmer and undertaker of this State, by reason of his New York license, do embalming or undertaking in an adjoining State without being licensed in the adjoining State?" would say, that each State makes its own laws upon this subject and the answer to this question would depend entirely upon the laws of the State where the New York undertaker attempted to practice his profession.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE BOARD OF PHARMACY.

Penal Code — Section 405a.

Sale of cocaine or its salts. Affixing of labels by wholesale dealers.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 15, 1907.

WARREN L. BRADT, *Secretary, New York State Board of Pharmacy, Albany, N. Y.:*

Dear Sir.—Your communication at hand, in which you ask whether that part of section 405-a of the Penal Code which reads as follows:

* * * “except, however, that such alkaloid cocaine or its sale, and alpha or beta eucaine or their salts, may lawfully be sold at wholesale upon the written order of a written pharmacist or licensed druggist, duly registered practicing physician, licensed veterinarian or licensed dentist, provided that the wholesale dealer shall affix or cause to be affixed to the bottle, box, vessel or package containing the article sold, and upon the outside wrapper of the package as originally put up, a label distinctly displaying the name and quantity of cocaine or its salts, alpha or beta eucaine or their salts, sold, and the word ‘poison,’ with the name and place of business of the seller, all printed in red ink,
* * * ”

requires the wholesaler to affix a label on admixtures of cocaine or its salts, and alpha or beta eucaine or their salts.

I am of the opinion that it was the intention of the Legislature to require wholesalers to label cocaine or its salts and alpha or beta eucaine or their salts, whether mixed or unmixed with other articles.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Public Health Law — Section 193.

(Hastings Bill.)

Licenses for pharmacists. Board of Pharmacy to be governed by law in force at time of application.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 22, 1907.

To the Honorable, The State Board of Pharmacy, Albany, N. Y.:

Gentlemen.—I have your inquiry “as to the position the Board occupies under the Hastings bill, Assembly No. 76-465, recently become a law by signature of the Governor.”

This act amends subdivision 3 of section 193 of the Public Health Law, but does not take effect until September 1, 1907. The Board of Pharmacy in the consideration of applications and the granting of licenses under said subdivision must be governed by the law in force at the time of the making of the application.

Subdivision 3 now reads:

“Any person who on the first day of January, 1901, shall hold a license or certificate of registration as a ‘pharmacist,’ granted upon examination by any legally constituted Board of Pharmacy of the State of New York, may make application to the Board of Pharmacy hereby created, surrendering his or her certificate or license of registration accompanied by a fee of \$1.00, may be granted by said Board a license to practice as a ‘licensed pharmacist’ anywhere within the State.”

Subdivision 3, as amended to take effect September 1, 1907, reads:

“Any person who shall hold a license or certificate of registration as a ‘pharmacist’ granted by any legally constituted Board of Pharmacy of the State of New York prior to the 1st day of January, 1901, may make application to the Board of Pharmacy hereby created surrendering his or her certificate or license of registration, accompanied by a fee of \$5.00, and may be granted by said Board a license to practice as a ‘licensed pharmacist’ anywhere within the State.”

Licenses may be granted upon applications made prior to September 1, 1907, under the present provisions of the section. After that date the applications must conform to the law as amended.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

OPINION RENDERED THE STATE BOARD OF
SPECIAL EXAMINERS AND APPRAISERS.

Barge Canal Law — Bridges.

Whether State shall construct new pier and raise bridge of the Erie Railway Company across Tonawanda creek, at Tonawanda.

(See opinion covering same question, rendered June 7, 1906.)

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 22, 1907.

HON. HARVEY J. DONALDSON, *Chairman, Board of Special Examiners and Appraisers, Albany, N. Y.:*

Dear Sir.—I have your favor of August 20, 1907, in which you ask for an opinion as to the liability of the State to construct a new pier and raise the bridge of the Erie Railway Company across Tonawanda creek at Tonawanda, N. Y.

On June 7, 1906, the Attorney-General rendered an opinion to the State Engineer and Surveyor relating to the "removal of bridges crossing the Erie canal and Tonawanda creek by railroads, the construction of highway bridge at Webster street by State," etc. This opinion covers the precise question asked by you and also the liability of the State with reference to the alteration or necessary changes to be made in other railroad bridges crossing Tonawanda creek. I enclose herewith copy of that opinion and concur in the views therein expressed.

The State is under no liability to pay for changes in the bridges of any railroad or other corporation or person crossing the present canal or rivers or natural watercourses of the State which are made necessary by the construction of the new barge canal.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE BOARD OF TAX
COMMISSIONERS.

Villages.

In re tax assessment on property acquired for barge canal purposes.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, February 27, 1907.

*To the Honorable, the State Board of Tax Commissioners,
Albany, N. Y.:*

Gentlemen.—In reply to your communication of the 26th instant, with inclosure of inquiry addressed to you by George H. Scott, chairman of the Board of Assessors of the village of Whitehall, will say:

Wherever the State officers, acting under the provisions of chapter 147, Laws of 1903, shall, by service of the map and notices provided for by that act, acquire, in behalf of the State, the title to real property for the purposes of the new canal improvement, such real property is not liable to further tax assessment.

In the case to which your correspondent in the village of Whitehall refers, it appears that the premises are occupied by persons who pay rent therefor to the State. In my opinion, that case is no exception to the rule stated.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Mortgage Tax Law.

Agreement for conditional sale of personal property to Orange County Traction Company, whether taxable.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 26, 1907.*

Hon. E. E. WOODBURY, *Chairman, State Board of Tax Commissioners, Albany, N. Y.:*

Dear Sir.—In reply to your communication of the 7th inst. in which you submit a copy of a proposed agreement for conditional sale of personal property only between H. A. Bartlett, trustee, and the Orange County Traction Company, and request an opinion as to whether or not such agreement is taxable under the Mortgage Tax Act as amended.

Section 290 of the Tax Law, being section 2 of chapter 532 of the Laws of 1906, defines real property as follows: "The words 'real property' and 'real estate,' as used in this article in addition to the definition thereof contained in section 2 of this chapter, shall be understood to include everything, a conveyance or mortgage of which can be recorded as a conveyance or mortgage of real property under the laws of the State. The words 'mortgage of real property' as used in this article, include every mortgage by which a lien is created over or imposed on real property or which affects the title to real property, notwithstanding that it may also be a lien on personal or other property, or that personal or other property may form part of the security for the debt or debts secured by such mortgage * * *."

Section 240 of the Real Property Law defines the term conveyance as follows: "The term conveyance includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected. * * *"

Under section 293 of chapter 532 of the Laws of 1906, a tax is imposed on mortgages of real property.

The above provisions clearly indicate that the Legislature did not intend to include within the Tax Act, mortgages covering personal property only. Section 290 of the Tax Law, quoted above, expressly provides that the executory agreements for the sale of real property under which the vendee has, or is entitled to possession, shall be deemed to be mortgages, thereby excluding executory contracts for the sale of personal property, and while section 111 of the Lien Law, chapter 418 of the Laws of 1897, requires that conditional sales of railroad equipment and rolling stock, where the title is to remain in the vendor until payment and the vendee has possession, shall be recorded in the county clerk's office in the book in which real estate mortgages are recorded, this does not change the character of a conditional sale of personal property to a sale of real property and where the conditional sale covers personal property only, I am of the opinion that it is not taxable under the provisions of chapter 532 of the Laws of 1906.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Tax Law — Section 230, Article 10.

State Board of Tax Commissioners should take nearest birthday in computing by mortality tables.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *April 16, 1907.*

HON. EGBURT E. WOODBURY, *Chairman, State Board of Tax Commissioners, Albany, N. Y.:*

Dear Sir.—I have your favor of the 4th instant, inquiring whether, in applying the mortality tables in determining the value of an inchoate right of dower, you should take the age of the person in interest at the last birthday, for the purpose of the Mortgage Tax Act, or at the nearest birthday, and in reply would

say that I believe in making your calculation you should be governed by the provisions of section 230 of article 10 of the Tax Law, quoted by you, viz.:

“The value of every future or limited estate, income, interest or annuity, dependent upon any life or lives in being shall be determined by the rule, method and standard of mortality and value employed by the Superintendent of Insurance in ascertaining the value of policies of life insurance and annuities for the determination of life liabilities of insurance companies.”

You should follow the rule adopted by the Superintendent of Insurance, which I am informed is that of the nearest birthday.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Mortgage Tax Law — Contracts.

Sale of real property, whether taxable. Amount unpaid on such contracts. (Section 294, chapter 729, Laws of 1905.)

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 13, 1907.

Hon. E. E. WOODBURY, *Chairman State Board of Tax Commissioners, Albany, N. Y.:*

Dear Sir.—In reply to your recent communication inquiring whether or not an executory contract for the sale of real property bearing date January 29, 1903, under which the vendee has or is entitled to possession and presented for record since July 1, 1906, to the county clerk of the county in which the property is situate, is taxable under the Mortgage Tax Act and the amount upon which the tax should be computed:

Section 294, chapter 729, Laws of 1905, provided:

“Executory contracts for the sale of real estate made after July 1, 1905, under which the vendee has or is entitled to possession, shall be deemed to be mortgages for the purpose of this article and shall be assessed at the amount unpaid on such contracts.”

This section was amended by section 2, chapter 532, Laws of 1906, by omitting the words “made after July 1, 1905,” clearly indicating the intention to tax contracts made prior to the passage of the act of 1906, but not presented for record until after the passage of such act.

In my opinion the words “amount unpaid on such contracts” refer to the amount unpaid at the date of the execution of the contracts, inasmuch as the contracts are deemed to be mortgages for the purposes of taxation at the time of their execution and the tax should be collected accordingly.

Respectfully yours,

WILLIAM S. JACKSON,
Attorney-General.

Tax Law — Assessments.

Whether oyster beds should be assessed as real or personal property, etc.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE.

ALBANY, June 6, 1907.

*To the Honorable, The State Board of Tax Commissioners,
Albany, N. Y.:*

Gentlemen.—Your favor of the 1st instant is received, inclosing a communication from G. Frank Tuthill, supervisor of the town of Southold, inquiring whether oyster beds should be assessed as real or personal property, and to what purpose the taxes derived therefrom are to be devoted.

The courts hold that oysters are "wild animals" and become personal property when they are reclaimed or artificially planted.

Fleet v. Hegeman, 14 Wend., 42.

Post v. Kreischer, 103 N. Y., 110.

People v. Hazen, 121 N. Y., 313.

Such domesticated, tame or "garden" oysters would be assessable as personal property under the ordinary rules. The lands upon which the oysters are planted are subject to the same rules of taxation as other real property.

I know of no statute applying the taxes derived from the assessment of oyster beds to any special purpose.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

County Law — Sections 117-118, 120-122.

Killing of sheep by dogs. Duties of town assessors to determine damage.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 6, 1907.

*To the Honorable, The State Board of Tax Commissioners,
Albany, N. Y.:*

Gentlemen.—Your favor of the 1st instant received, inclosing letter from Joseph A. McCullogh, assessor of the town of Acidalia, making inquiries in regard to assessment damages occasioned to sheep by dogs.

The facts as he stated them are that the sheep of one L. A. Stuart, a farmer of his town, were killed and injured by two dogs, one of which it is claimed belonged to the said Stuart. Mr. Stuart notified Mr. McCullogh, as assessor, to appraise the damage.

Section 118 of the County Law, provides:

"The owner of any sheep or lambs * * * that may be killed or injured by dogs, may apply to any two fence viewers of the town * * * where such sheep or lambs * * * were killed or injured who shall inquire into the matter and examine witnesses in relation thereto, and if they shall be satisfied that the same were killed by dogs and in no other way, they shall certify such fact, the number * * * and * * * injured, and the value of the sheep * * * killed or injured, etc."

Section 120 of the same law, provides:

"Such certificate shall be presented to the town board at its second annual meeting for audit, and if such board shall be satisfied by the oath of the person claiming such damages that he has not been able to discover the owner or possessor of the dog or dogs by which such damage was done, or that he has failed to recover his damages of such owner or possessor, it shall give its order on the supervisor for the amount which it shall allow * * *."

Section 122 of the same law, provides:

"If after receiving the amount of such damages from the supervisor, the owner of the sheep * * * killed or injured shall receive or recover the value, or a part thereof, from the owner or possessor of the dog or dogs doing the damage, he shall repay to the supervisor the sums so recovered."

Section 117 of the same law, provides:

"The owner or possessor of any dog that shall kill or wound any sheep or lambs * * * shall be liable for the value of such sheep or lambs * * * to the owner thereof."

It has been held by the courts that where damage to sheep is done by several dogs, the owner of each dog is liable for the injury done by his dog only; that in the absence of proof the presumption is that each dog did an equal amount of damage, but that this presumption is subject to proof of the different

sizes or strength of the various dogs, when the larger or stronger dog may be presumed to have done more damage than the smaller or weaker dog.

Van Steinberg v. Tobias, 1 Denio, 562.

Parkenheimer v. Van Arder, 20 Barb., 479.

Wilbur v. Hubbard, 35 Barb., 303.

Carroll v. Weiller, 4 T. & C., 131.

It would, therefore, seem that it is the duty of the assessors, as fence viewers, having received proper notice from Mr. Stuart to inquire into the matter, and if they are satisfied that the sheep were killed by dogs and in no other way, to certify that fact, together with the amount of damages incurred, to the town board. It is then for the town board to determine whether Mr. Stuart has been able to discover the owner or possessor of the dog or dogs by which his sheep were injured, or whether he has failed to recover his damages from such owner or possessor of such dog or dogs. If it shall appear to the town board that one of Mr. Stuart's dogs participated in causing the damage to his sheep, it would be proper for the town board to withhold from Mr. Stuart the personal part of the damage occasioned by his own dog.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Tax Law — Corporations.

Taxation of property of the Silver Bay Association, town of Hague, Warren county.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 12, 1907.

*To the Honorable, The State Board of Tax Commissioners,
Albany, N. Y.:*

Gentlemen.—I have your communication of March 14, 1907, in which you ask for my opinion relative to the taxation of the

property of the Silver Bay Association, in the town of Hague, Warren county.

The Silver Bay Association was incorporated by chapter 102 of the Laws of 1904, entitled "An act to incorporate the Silver Bay Association for christian conferences and training."

The objects of the incorporation are stated in the act to be "for religious, missionary, charitable and educational purposes and for the moral and mental improvement of men and women by promoting and providing for conferences of workers in religious organizations, by providing a summer recreation home and training school for such workers and for the training of the leaders of the missionary departments of the young peoples' societies of various denominations."

It is provided by the act that said "corporation shall have no capital stock and shall declare no dividends and no officers, committeemen or employee of this corporation shall receive or be entitled to receive any pecuniary profit from the operations of such corporation, except that reasonable compensation for services may be paid to employees for services rendered in effecting the purposes of the corporation. * * * Any surplus money remaining on hand after meeting the expenses of the corporation, shall be used for such religious or charitable purposes, not inconsistent with the terms of this act, as the executive committee shall determine."

It is also provided by the act that there shall be an executive committee of twenty-seven and that at all times at least three members of such committee shall be members or secretaries of the Young Peoples' Missionary Movement, and at least eleven members of such executive committee shall be members or secretaries of the International Committee of Young Men's Christian Associations or of State or provincial committees of Young Men's Christian Associations.

The Silver Bay Association claims that the real estate owned by it in the town of Hague, in the county of Warren, is exempt from taxation under subdivision 7 of section 4 of chapter 908 of the Laws of 1896, excepting the store property upon its said premises.

From the letter of the assessors of the town of Hague to your Honorable Board and the affidavit of William D. Murray, the president of the Silver Bay Association, and the statements and other papers submitted therewith, it appears that said Association owns in fee a tract of land consisting mainly of mountain land upon the shores of Lake George and upon which, near the shores of said lake, are certain buildings and cottages used for the purposes of the said corporation. That said buildings consist of one that was formerly used as a hotel and several cottages and structures, together with a dock, bath house, boat house and laundry, and about 1,500 acres of wild lands.

It also appears that said corporation holds said lands for the use of such religious and educational organizations as may seek and be permitted to use the same for religious, educational and missionary purposes, and that they are so used by the College Young Women's Christian Association and the City Young Women's Christian Association, the Young People's Missionary Movement and by the Young Men's Christian Association and that religious, educational and physical instruction are provided by teachers and lecturers employed for that purpose, and that said association devotes itself only to the purposes as specified in the act of its incorporation. That under the rules and regulations of the association, no person is permitted to use its property for any purpose who is not a member of or engaged in the work of one or more of said organizations, or of an organization having for its object religious, missionary or educational work and duly certified to be such by such organization, and that said corporation does not receive for entertainment transient guests, nor receive at any time those who are not duly certified as above and that the buildings, except the store upon said premises, are used exclusively for the use of those who come to attend the various meetings, conferences and conventions of the various societies above mentioned and others of like character, and that all of the revenue derived from the use of this property is used in keeping up the repairs, improvements and equipment thereof. That they have accommodations for about 650 persons in the buildings upon their premises.

It does not affirmatively appear that the fifteen hundred acres of wild lands are used for any purpose.

From the foregoing facts, as disclosed in the papers before me, it appears that the association is a corporation in good faith, exclusively organized and conducted for carrying out several of the purposes mentioned in the statute; that it does not make any pecuniary profit from its operations; that none of its members, officers or employees receive or are entitled to receive any pecuniary profit, except reasonable compensation for services necessarily performed in effecting its educational purposes and that it conducts during the summer months an institution for the moral or mental improvement of men and women and for religious and educational purposes.

The fact that it furnishes a recreation home for those who attend the various meetings, conferences and conventions, seems to be merely an incidental rather than the main purpose of the association.

In the case of *the People ex rel. Blackburn v. Barton and others as Assessors* (63 App. Div. 581), the relator was an association owning 467 acres of land in the town of Elko, Cattaraugus county, upon which was a large building where the teachers and students lived; another building in which were school rooms and which was also used for living purposes; a large barn and the usual outbuildings connected with the farm. Eighty acres of the land were used to raise crops and for pasturage; about fifty acres called the "wood pasture" had been used to cut wood for the sole use of the institution and cattle were also pastured there, and the balance of the land was covered with different kinds of timber and was put to no use. The court held that the eighty acres of land that was used for farm purposes and for pasturage was exempt from taxation and that the balance was subject to taxation. The court said:

"The statute says that if a portion only of the real property is used exclusively for carrying out such purposes, then it shall be exempt only to the extent of the value of the portion so used, and the remaining portion shall be taxed. It is quite clear upon the facts shown here that the only

portion of the property which is actually used for the purposes of the institution is the eighty acres of plow and meadow land and upon which stock is pastured. The remainder is not used at all, except perhaps the fifty acres from which wood is cut, and it clearly does not come within the exemption of the statute and is subject to taxation."

In *People ex rel. Academy of the Sacred Heart v. Commissioners of Taxes* (6 Hun, 109; affirmed in 64 N. Y., 656), the court exempted from taxation thirty-six acres of land used by pupils of relator's school for recreation and also eight acres whereon vegetables were raised for the school.

In *People ex rel. Seminary of Our Lady of Angels v. Barber* (42 Hun, 27, affirmed in 106 N. Y., 699), the court exempted from taxation a number of acres of land that supplied hay, grain and vegetables for use of relator's college. It also exempted:

"A chapel and other buildings occupied as a tailor shop, repairing of the clothes of the professors and pupils, a shop for repairing their shoes, a music and band room and some sleeping rooms, a laundry, a wood-house, a bake shop and carpenter shop, machine shop, printing office, gas house and boiler room and some dwellings."

The court said:

"These buildings were exempted because they were occupied and used in the business carried on for the benefit and purposes of the institution, and the teachers and students of the college."

In the case of *People ex rel. Missionary Sisters v. Reilly* (85 App. Div., 71; affirmed 178 N. Y., 609), the court exempted from taxation about thirty-six acres of land on which were situated a school building, four cottages and a barn which the court held were necessary for carrying out the work of the relator's school, and held that a part of the land owned by the relator contained about five acres upon which was a dock which was leased and the net income applied to the support and maintenance of the school, was not exempt for the reason that it did not appear that it was used or was necessary for the purposes of the school.

In the case of the People ex rel. the Board of Trustees of Mt. Pleasant Academy v. William P. Meager and others as Assessors (98 App. Div., 237; affirmed 181 N. Y., 511), the court exempted from taxation the property of the relator upon which were dormitories and drill rooms, armories, stable, library building and buildings occupied by the lessees as a residence, recreation grounds and dining halls, and the court held that:

"Recreation grounds are common to almost every large school in these days, when the old saw 'all work and no play makes Jack a dull boy,' is held hygienically sound.

* * * I think that the term 'used exclusively for educational purposes,' when applied to this academy is broad enough to cover the buildings and grounds which form a part of the foundation and which are exclusively used for the school life, whether the lads are at study or at recitations or are eating, reading, sleeping, drilling or at play."

Upon the facts in this case, I am of the opinion that the real property of the Silver Bay Association, including the building formerly used as a hotel and the other cottages and structures, together with the dock, bathhouse, boathouse, barn and laundry situated thereon, and which are exclusively used for the purposes of the incorporation of the association in its religious and educational work, are exempt from taxation. That the store property, so-called, which is not used for the purposes of the association, but which, although convenient, is not necessary therefor, is not exempt from taxation, and that the wild lands which are not used and which do not produce any revenue, are not exempt from taxation.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Tax Law — Corporations.

Taxation of property of Railroad Young Men's Christian Association of Mechanicville.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 13, 1907.

*To the Honorable, the State Board of Tax Commissioners,
Albany, N. Y.:*

Gentlemen.— I have your communication of March 14, 1907, requesting an opinion relative to the exemption from taxation of the property of the Railroad Young Men's Christian Association of Mechanicville.

The Railroad Young Men's Christian Association of Mechanicville was incorporated April 21, 1904, pursuant to and in conformity with an act of the Legislature of the State of New York, passed May 8, 1903, entitled "An act relating to membership corporations and the several acts amendatory thereof and supplemental thereto." The objects for which said corporation was formed, as stated in its certificate of incorporation, were to

"promote the spiritual, mental, social and physical welfare of young men, and to that end to conduct meetings, classes and entertainments; to provide lectures, maintain libraries and reading rooms and any and all forms of exercise appropriate to the purposes of this corporation; to provide and maintain suitable meeting places; to hire, purchase or otherwise acquire lands and buildings; to lease, sell and mortgage the same or otherwise dispose thereof; to erect, alter and construct buildings and to do any and all acts incidental to any of the above purposes."

The purposes, as thus stated in its certificate of incorporation, followed the language of the statute.

A constitution was adopted in which, in the preamble, it was recited that:

"We, the subscribers, impressed with the importance of definite effort to promote the spiritual, mental, social and physical welfare of the railroad and other men resident in

or near or running into Mechanicville, unite in forming an association for this purpose and adopt for the government thereof, the following:"

By the constitution the membership of the association was limited to men at least sixteen years of age and was divided into active and associate members, who must be employees in the railroad, sleeping car, express, telegraph or railroad postal service and members in good standing of an evangelical church. Provision was made for a board of directors and a board of trustees and their election and qualification. It was also provided that there shall be an annual meeting, at which time the annual report of the treasurer and the committees shall be presented and the directors elected, and also, that other meetings of the association shall be held at stated intervals, as arranged for by the board of directors

"for the promotion of social intercourse, for the presentation of reports of the standing committees and such other exercises as may be provided for by the board of directors."

The by-laws provide that there shall be quarterly meetings held on the first Monday of February, May, September and December; that the order of exercise at such meetings shall be, first, "devotional exercises." The by-laws also provide for standing committees on "(1) religious work department; (2) educational department; (3) social department; (4) visitation of sick and injured."

The by-laws provide that the committee in charge of the religious work department

"shall arrange for and sustain Bible classes, men's meetings, the organized personal work and of work naturally belonging to it."

The committee in charge of the educational department

"shall arrange for and direct the work of the educational classes and shall have charge of the reading room, library, literary societies, educational lectures and practical talks and educational clubs."

The committee in charge of the social department

“shall plan for and direct the social work, including social entertainments, systematic receptions and care of visitors. It shall assist in arranging the social features of the quarterly meetings and shall use every means to create and maintain a social atmosphere in the building. It shall co-operate with the committee of the educational department in arranging entertainments of an educational character.”

Annual dues of \$3 are paid by both active and associate members. The use of the reading rooms and such other privileges as the board of directors may permit, are accorded to all railroad men.

The association, on November 29, 1904, adopted a “Policy of the R. R. Y. M. C. A. of Mechanicville,” from which it appears that the membership of the association shall be composed of the employees of the Boston & Maine Railroad, Delaware & Hudson Company, the National Express Company, the Railroad Telegraph, the Pullman Company and the Railway Mail Service; that a dormitory, reading room, billiard room, bowling alley, assembly hall and restaurant are maintained by the association, for which charges for the use thereof are made to the members and to such others as are permitted to use the same. It is provided that non-members may use the dormitories at a fixed charge per night when by so doing members will not be discommoded. It also appears that the association is supported by regular monthly appropriations of the above named railroad companies and by subscriptions from charitably disposed people and from the receipts of the restaurants, pool tables, dormitories, etc.

The property owned by the association is not specified by you and whether it consists of realty or personal property, I am not advised, but it is claimed that its property, of whatever nature, is exempt from taxation under subdivision 7 of section 4 of chapter 908 of the Laws of 1896, as amended, constituting chapter 24 of the General Laws. Said subdivision 7 provides:

“The real property of a corporation or association, organized *exclusively* for the moral or mental improvement of men or women, or for religious, bible, tract, charitable, benevolent,

missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more of such purposes, and used exclusively for carrying out thereupon one or more of such purposes; and the personal property of any such corporation shall be exempt from taxation."

It has been uniformly held by the courts of this State that:

"The provisions of the Tax Law exempting property from taxation are strictly construed against those claiming the exemption. (*People ex rel. Young Men's Association v. Sayles*, 32 App. Div. 197, affirmed 157 N. Y. 677; *People ex rel. Delta Kappa Epsilon Society v. Lawler*, 74 App. Div. 573, affirmed 179 N. Y. 535; *People ex rel. Missionary Sisters v. Reilly*, 85 App. Div. 71, affirmed 178 N. Y. 609; *People ex rel. Blackburn v. Barton*, 63 App. Div. 581.)"

In *People ex rel. Blackburn v. Barton*, (*supra*), the court said:

"Before the relator can secure the benefit of the exemption, it is necessary that it should bring itself clearly within the provisions of the statute."

The Railroad Young Men's Christian Association of Mechanicville, under its certificate of incorporation, constitution, by-laws and policy, adopted by it, does not seem to have been organized for, nor engaged in, carrying out exclusively the purposes mentioned in subdivision 7 of section 4 of article I of the Tax Law. While its certificate of incorporation, constitution and by-laws make provision for religious, literary or educational exercises, such do not seem to be the main purpose of its organization and existence, but that the social entertainment and club features of the association are the primary and real causes for its organization and existence. The "Policy," adopted by the association, indicates most clearly that the material and physical comfort of its members and guests is sought to be provided for, rather than their spiritual and mental welfare and such "Policy" does not seem to contemplate any religious, educational or other purposes, specifically mentioned in the above quoted subdivision 7 of section 4 of the Tax Law.

In *People ex rel. Young Men's Association v. Sayles* (32 App. Div. 197, affirmed 157 N. Y. 677), it was held that:

"Statutes exempting property from general taxation must be strictly construed against the property holder and, if the exemption is not plainly expressed, it may not be presumed. Our courts apply the same strict rule to religious and charitable corporations. It may be observed with respect to these cases that the statute we are now considering prescribes exclusive use as the main test of exemption and then guards it by further provisions against a relaxation of that test."

I am of the opinion that the above association has not shown itself to be within the exemptions provided by the statute and that its property is not exempt from taxation.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Mortgage Tax Law — Trust Mortgages.

Bonds pledged as collateral security. Whether tax is due upon.

Chapter 729, Laws of 1905.

Chapter 532, Laws of 1906.

Chapter 340, Laws of 1907.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 21, 1907.

RALPH E. THOMPSON, Esq., *Clerk of the State Board of Tax Commissioners, Albany, N. Y.:*

Dear Sir.—Replying to your favors of the 24th and 29th ults. would say, the question presented by your letters is as follows:

A domestic corporation filed and recorded on the 5th day of May, 1906, a trust mortgage to secure the issue of bonds of the amount of \$150,000. The mortgage contained a statement that none of the principal indebtedness secured thereby had been ad-

vanced at the time of its recording. Subsequently to July 1, 1906 and prior to May 13, 1907, some of the bonds were sold and other bonds were pledged as collateral security for notes on which money was loaned for the benefit of the company by various banks and which notes have not yet matured. Is a tax due upon the mortgage for the bonds pledged as security for the notes?

On examination of the provisions of chapter 729 of the Laws of 1905, as amended by chapter 532 of the Laws of 1906 and chapter 340 of the Laws of 1907, I am of the opinion that when the bonds above-mentioned were pledged as collateral security for notes, they were issued within the meaning of the said law, and on reading sections 12 and 22 of chapter 532 of the Laws of 1906 together, that a tax became due upon the mortgage to the extent of the amount of the principal indebtedness advanced, that is, fifty cents on every hundred dollars and each remaining major fraction thereof of face value of bonds pledged.

The fact that the notes might be paid when due is immaterial as the security afforded by the mortgage was utilized when the bonds were pledged.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Tax Law — Assessments.

Property in streets and highways placed there only by consent of abutting owners, should be assessed locally.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, September 11, 1907.

Hon. E. E. WOODBURY, *Chairman, State Board of Tax Commissioners, Albany, N. Y.:*

Dear Sir.—Replying to your favor of the 10th ult., inquiring whether or not your Board has authority to make assessments on the property of corporations or individuals located in streets or highways where no permit has been granted for such occupation,

either by State or municipal authorities, but such occupancy being had solely through consent of abutting owners, would say that the Appellate Division of the State of New York, Third Department, in the case of *People ex rel. Retsof Mining Co. v. Priest*, in 75 App. Div. 131, has decided that when a corporation or individual places its property in streets or highways without the consent of the municipality or State but with the consent of the owners of abutting property, it has no special franchise within the meaning of the Tax Law, and the State Board of Tax Commissioners has no authority to assess the same. This case has been affirmed by the Court of Appeals in 175 N. Y. 511.

This decision is therefore controlling upon the question propounded by you. Such corporations or individuals have no special franchise and should not be assessed by your Board, but such property should be assessed locally.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Tax Law — Assessments — Special Franchises.

Right of State Board of Tax Commissioners to assess pipe lines, cables, tunnels, etc., in and under public waters within Greater New York; bridges across Hudson river, etc.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 18, 1907.*

Hon. E. E. WOODBURY, *Chairman, State Board of Tax Commissioners, Albany, N. Y.:*

Dear Sir.—Replying to your favor of the 10th ult., inquiring as to the jurisdiction of the State Board of Tax Commissioners to assess as and for special franchises the pipe lines, cables, tunnels in and under the public waters within the city of New York and bridges across the Harlem river, would say that your jurisdiction to assess this property depends entirely upon the fact whether or not such property is used in connection with a special

franchise. If the property is connected with a special franchise, it is your duty to assess it. If it is not connected with a special franchise, then your Board has no jurisdiction to assess the same. It therefore becomes necessary for you to know what is meant by the term special franchise as used in the Tax Law. I can best explain this by using the language of the court in the case of the People ex rel. Retsof Mining Co. v. Priest, reported in 75 App. Div. 132 and affirmed by Court of Appeals in 175 N. Y. 511. In discussing what constitutes a franchise, the court said:

“ The franchise here does not mean the right to exercise corporate functions, but the right to use the public streets, highways or public places * * * . The ‘ franchise right, authority or permission ’ here mentioned must mean some special privilege derived from some governmental body or some political body having authority to grant the property rights sought to be taxed. It is this species of property, intangible in its nature, which the law was enacted to reach.”

Having ascertained what is a special franchise, the provisions of the Tax Law relating to jurisdiction may now be examined. Subdivision 3 of section 2 of the Tax Law reads in part as follows:

“ * * * A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation, situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise.”

Section 42 of the Tax Law provides in part:

“ The state board of tax commissioners shall annually fix and determine the valuation of each special franchise subject to assessment in each city, town or tax district * * * .”

Section 47, in part, provides:

“ * * * The tangible property subject to a special franchise tax situated in, upon, under or above any street,

highway, public place or public waters, as described in subdivision 3 of section 2, shall not be taxable except upon the assessment made as herein provided by the state board of tax commissioners."

From the foregoing provisions it is clear that the jurisdiction of your Board to assess or determine the value of special franchises is coextensive with the existence of this species of property within the State. Wherever there exists within the State what the law denominates a special franchise, it is your duty to assess it and also the tangible property used in connection with it, whether that property be situated in or under or above the streets, or in or under or above public waters, and it matters not what the nature of the property may be so long as it is connected with a special franchise.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Tax Law — Section 4, Subdivision 5.

Exemption of property purchased with pension money. Word "pensioner" applying to wife or widow, not children.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 15, 1907.*

Hon. BENJAMIN E. HALL, *State Board of Tax Commissioners,*
Albany, N. Y.:

Dear Sir.— I have your favor of the 4th ult. in which you inclose the affidavit of an applicant for exemption from general taxes, presented to a town board of assessors. The affidavit substantially states that the applicant is the owner and in possession of real property purchased with the proceeds of a pension granted to the applicant while a minor, the applicant being the daughter of a man who died while serving in the United States army in the Civil war. The question embodied in your letter is whether the applicant is entitled to the exemption claimed, or, to put the question in another form, what is the meaning of the word "pen-

sioner" as used in subdivision 5 of section 4 of the Tax Law? An examination of the statutes covering this matter convinces me that the applicant is not entitled to the exemption claimed. Subdivision 5 of section 4 of the Tax Law reads as follows:

"5. All property exempt by law from execution, other than an exempt homestead. But real property purchased with the proceeds of a pension granted by the United States for military or naval services, and *owned and occupied by the pensioner, or by his wife or widow*, is subject to taxation as herein provided. Such property shall be assessed in the same manner as other real property in the tax district. At the meeting of the assessors to hear the complaints concerning assessments, a verified application for the exemption of such real property from taxation may be presented to them by or on behalf of the owner thereof, which application must show the facts on which the exemption is claimed, including the amount of pension money used in or toward the purchase of such property. If the assessors are satisfied that the applicant is entitled to the exemption and that the amount of pension money used in the purchase of such property equals or exceeds the assessed valuation thereof, they shall enter the word 'exempt' upon the assessment roll opposite the description of such property. If the amount of such pension money used in the purchase of the property is less than the assessed valuation, they shall enter upon the assessment roll the words 'exempt to the extent of dollars' (naming the amount) and thereupon such real property, to the extent of the exemption entered by the assessors, shall be exempt from state, county and general municipal taxation, but shall be taxable for local school purposes and for the construction and maintenance of streets and highways. If no application for exemption be granted, the property shall be subject to taxation for all purposes. The entries above required shall be made and continued in each assessment of the property so long as it is exempt from taxation for any purpose. The provisions herein relating to the assessment and exemption of property purchased with a pension apply and shall be enforced in each municipal corporation authorized to levy taxes."

Section 1393 of the Code provides in part "that real property purchased with the proceeds of a pension granted by the United States for military or naval service and owned by the pensioner or by his wife or widow is subject to seizure and sale for the collection of taxes or assessments lawfully levied thereon."

You will notice that the words used in the Tax Law are "pensioner or his wife or widow." There is no mention in the statutes of children of a pensioner, and from the fact of this omission it is clear that the Legislature did not intend to extend the benefits of exemption to such children; and the use of the words "wife or widow" following the word "pensioner" indicates an intention to limit the meaning of the term pensioner to the person who performed military or naval service for the United States and who receives a pension therefor. The children of a pensioner, therefore, although receiving a minor's pension, are not within the meaning of the word "pensioner" as used in the statutes.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Mortgage Tax Law.

Method of apportionment mortgage tax, basis for computation, amount of exemption, etc.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 22, 1907.*

Hon. E. E. WOODBURY, *Chairman, State Board of Tax Commissioners, Albany, N. Y.:*

Dear Sir.—I have your favor of the 8th inst., reading as follows:

"A corporate trust mortgage was executed by a railroad corporation, covering real and personal property located partly within and partly without the state, to secure an issue of \$12,000,000 of bonds. Two million dollars of these bonds were issued before the mortgage was recorded in this State, and a statement of the amount so advanced was contained

in the mortgage at the time of recording, as permitted by section 296 of the Mortgage Tax Law. There was filed with the recording officer at the same time a statement showing the value of the property covered by the mortgage located without the State to be \$3,000,000 and that located within the State to be \$4,000,000, and upon these values the mortgage tax upon the \$2,000,000 advancement was made, allowing proper exemption for property located without the State. The real property covered by the mortgage within the State was located say, in tax district "A" and "B," where it was assessed, and was described by metes and bounds in the mortgage. The mortgage contains a provision covering all after-acquired property and for the execution and recording of supplemental mortgages on such property as the same is acquired. Out of the proceeds of this \$2,000,000 advance at the time of recording the mortgage, the mortgagor purchased real property in Pennsylvania of the value of \$1,000,000 and also purchased property in this State, in tax district "C," of the value of \$500,000, and spent the remaining \$500,000 in construction work and improvements in said tax districts "A" and "B". A supplemental mortgage was executed, covering this newly acquired property in Pennsylvania and in this State, and the same was offered for record, accompanied by a statement under oath as required or permitted by section 293-b of the mortgage tax law, and making claim to exemption of the same from taxation, and the same was recorded without the payment of additional tax, as permitted by that section. Now a further advancement of \$3,000,000 is made upon this mortgage and the corporate mortgagor files the statement prescribed by section 296 of the mortgage tax law and offers to pay the tax on the new advancement, but claims exemption on account of the \$1,000,000 of after-acquired property in Pennsylvania covered by the general clause of the original mortgage and also by the supplemental mortgage.

These conditions present several questions of considerable moment in the administration of the mortgage tax law:

First. Under such conditions, is the value of the after-acquired property to be taken into consideration in determin-

ing the basis for the computation of the tax and the amount of exemption to be allowed, or is the basis of the tax and the amount of exemption allowed to be determined by the value of the property embraced in the original or primary mortgage at the time of its execution?

Second. If this after-acquired property is to be considered in determining values to be taken as the basis of taxation and of exemption, does the same condition prevail, as respects each subsequent advancement, where property is subsequently acquired to which the mortgage lien attaches, whether situated within or without the State?

And third. If so, is each advancement to be treated separately when determining values to be used as the basis of taxation and exemption, dependent upon conditions existing at the time of such advancement; or, is the whole subject to open so as to acquire all advancements made up to that time and all property covered by the mortgage at the time of each such subsequent advancement to be taken into consideration for the purpose of readjusting the basis of taxation and exemption.

Fourth. Under the facts as stated, is tax district "C" in which after-acquired property has been subjected to the lien of the mortgage, entitled to share in the apportionment of the tax upon subsequent advancements as between the several tax districts of this State?

Fifth. Predicated upon the last preceding inquiry, the broad question is presented as to what basis shall be taken in apportioning mortgage taxes upon subsequent advancements where, prior to such advancements, additional property has been acquired in any tax district of this State and become subjected to the lien of the mortgage by virtue of its provisions relating to after-acquired property. Is after-acquired property to be considered in making the apportionment, or are the requirements of the mortgage tax law such as to require the apportionment to be made upon the basis of the value of property embraced in the mortgage at the time of its execution?

And again, if the value of after-acquired property is to be considered in arriving at the basis of apportionment with-

in the State, are payments of taxes to the various tax districts under previous apportionments also to be taken into consideration in determining the amount of tax to which each tax district is entitled, to the end that each tax district in the State shall receive is proper proportion of the entire tax under the mortgage when all advancements thereon have ultimately been made; or, are previous apportionments of taxes to the various tax districts to be disregarded, and is each subsequent advancement to be apportioned among the tax districts then entitled to share in the same, upon the basis of the value of properties then covered by the mortgage, as though no previous apportionment has been made?

Several cases are pending before this department involving various phases of the questions propounded, no one of which involves all of such inquiries. We have, therefore, deemed it advisable to state a case in hypothetical form, to the end that when the matter has been thoroughly considered it may serve as a guide in the disposition of these various questions presented before this board.

The apportionments now pending before this board, wherein these questions are presented, involve the tax on mortgages of very large sums of money, and it is highly important that correct principles be laid down in making disposition of such questions.

It is also very important that we have the opinion of your department within the next week or ten days at the outside, to the end that the apportionment of these taxes can be made among several tax districts of the State, so that the moneys received thereunder by the various recording officers can be reported to the boards of supervisors of the respective counties for apportionment prior to November first next, as required by the statute.

We trust you will be able to give these matters your immediate consideration."

I will reply to your questions in the order in which they are asked, without stating the reasons which guide me in reaching the several conclusions.

First. All property covered by the original and supplemental mortgage at the time any advancement is made is to be considered in determining the amount of tax to be paid and the amount of exemption to be allowed on such advancement. The amount of tax to be paid on each advancement is to be determined by the relative value of the mortgaged property within the State as compared to the value of the entire mortgaged property within and without the State, taking into consideration the amount of all prior incumbrances upon such property or any portion thereof.

Second. The answer to this question is embraced in the answer to the previous one. The rule above given applies to each advancement under the mortgage.

Third. The answer to the first question disposes of this question. All the property covered by the original and supplemental mortgages at the time any advancement is made is to be considered in determining the amount of taxation and exemption.

Fourth. Tax district "C" is entitled to share in the apportionment of the tax upon each advancement made at the time or after the time any property in tax district "C" is covered by the mortgage or by any supplemental mortgage.

Fifth. After-acquired property embraced in the supplemental mortgage is to be considered in making the apportionment, and the apportionment as to the several counties within the State is to be based upon the relative assessments of the property embraced within the original and supplemental mortgage at the time each advancement is made, and in making the apportionment within the State, payments of taxes to the various tax districts made under previous apportionments for previous advances have no bearing on subsequent apportionments on other advancements.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

State Board of Tax Commissioners.

Reports under section 43, Tax Law, considered as public documents and open to inspection.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, December 30, 1907.

Hon. E. E. WOODBURY, *Chairman, State Board of Tax Commissioners, Albany, N. Y.:*

Dear Sir.—Replying to your favor of December 10th, inquiring whether or not the reports made to the State Board of Tax Commissioners under section 43 of the Tax Law should be treated as public records or documents or as documents of a confidential character, I would say that I believe the reports made to the board should be treated as reports filed in a public office, with a public board, and should, at all reasonable times, during the business hours of the commission, be open to public inspection, and that individuals should during such hours, be afforded the opportunity to make such extracts from the reports as they desire.

While there is no express statutory provision to the above effect, many reasons may be urged to show the soundness of such construction. The members of the State Board of Tax Commissioners are public officers; their office is maintained at public expense and for the benefit of the people of the State, and to my mind there is no valid reason why the rule obtaining in other public offices of the State should not be applied to this department.

The view which I have taken of this matter makes the answering of the other questions contained in your letter unnecessary.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE CIVIL SERVICE COMMISSION.

State Civil Service — Public Corporations.

Whether employees of the Hudson-Fulton Celebration Commission, are within.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 16, 1907.*

HON. JOHN C. BIRDSEYE, *Secretary, State Civil Service Commission.*

Dear Sir.—I beg to acknowledge the receipt of your letter of the 15th ult., asking my opinion as to whether the employees of the Hudson-Fulton Celebration Commission are within the civil service of the State of New York and their accounts subject to certification by the Civil Service Commission under the provisions of section 19 of the Civil Service Law.

This commission was created a corporation by chapter 325 of the Laws of 1906, which provides in section 1 that the persons therein named and “all such persons as are or may hereafter be associated with them by appointment of the governor, or the said mayor, shall be and are hereby constituted a body politic and corporate by the name of the Hudson-Fulton Celebration Commission, which corporation shall be a public corporation.”

Section 2 of the same act provides that the objects of said corporation shall be the public celebration or commemoration of the two historical events therein enumerated.

Section 3 gives the corporation the power to acquire real property by condemnation.

Section 6 provides that it shall annually make to the Legislature a statement of its affairs.

Section 7 reads: “Whenever the commission shall report to the Legislature that the purposes for which this commission is created have been attained and all its debts and obligations have

been paid, its remaining real and personal property shall be disposed of as the Legislature may direct."

By section 9 the sum of \$25,000 is appropriated "for the purposes of this act," and provides that "such money shall be paid by the Treasurer on the warrant of the Comptroller issued upon a requisition signed by the president and secretary of the commission, accompanied by an estimate of the expenses, for the payment of which, money so drawn is to be applied."

Section 10 authorizes the city of New York to provide money for said commission.

It will be noticed that the corporation thus created is specifically declared to be a "public corporation" and that its objects are purely of a public nature. If this corporation were not a public corporation the appropriation made therefor by the act and the permission granted thereby to the city of New York to provide money for it would be of very doubtful constitutionality under sections 9 and 10 of Article VIII of the State Constitution.

A "public" corporation is defined in the Amer. & Eng. Enc. of Law, as follows:

"Public corporations, strictly speaking, are such only as are founded by the government for public purposes and where the whole interests belong also to the government. They are political institutions erected to be employed in the administration of the government. There is no contract between the government and the governed, for but one party is concerned, the public; and the inhabitants upon whom the powers and privileges are conferred are merely trustees to hold and exercise such powers for the public good. Upon such corporations the creating power may impose such modifications, extensions or restrictions as the general interests and public exigencies may require without infringing private rights."

This definition has the support of text writers of recognized authority.

Subdivision 3 of section 2 of the Civil Service Law reads as follows:

"The 'civil service' of the State of New York, or any of its several divisions or cities, includes all offices and positions

of trust or employment in the service of the State, or of such several divisions or cities, except such offices and positions in the militia and the military departments as are or may be created under the provisions of article XI of the Constitution."

Were it not for the phraseology of the statute, as above quoted, and had an agency membership corporation been created by the Legislature, it would be reasonably plain that the employees thereof would not come within the operation of the Civil Service Law. But this is not the case. The Legislature has created a *public* corporation, which is a governmental agency in some measure at least analagous of a municipal corporation. It is a corporation created to carry out a state function subject in all respects to the direction of the State and its property subject to the disposition of the Legislature.

I am, therefore, of the opinion that the employees of the commission are "in the state service" and that "the estimate payroll or account" for their salary or compensation is subject to the certification of the State Civil Service Commission under section 19 of the Civil Service Law.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

OPINIONS RENDERED THE STATE COMMISSION IN LUNACY.

State Commission in Lunacy—Insanity Law.

Licenses for establishment of institutions for the insane. Powers of Commission regarding five years service as physician in hospital exclusively for care of insane.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, February 4, 1907.

Hon. T. E. MCGARR, *Secretary, State Commission in Lunacy, Albany, N. Y.:*

Dear Sir.—Your letter of the 4th instant, requests the Attorney-General to render an opinion as to whether your Commission can require an applicant seeking a license under section 47 of the Insanity Law, to have five years' experience in a hospital *exclusively* for the care and treatment of the insane.

In reply to your communication, I desire to state that, in my opinion, the Insanity Law vests the Commission in Lunacy with ample power to determine to whom and under what conditions a license shall be issued for the establishment and maintenance of an institution for the care, custody or treatment of the insane for compensation or hire.

By the terms of the Insanity Law, no person is permitted to establish a private institution for the insane without first obtaining a license therefor from the Commission, and, from an examination of the safeguards provided by the statute in the interest of those unfortunates, who may become inmates of such institutions, I am satisfied that the Commissioners have exclusive jurisdiction to examine as to the qualifications and fitness of persons who may make application for permission to establish and operate institutions of this character and to determine whether or not a license shall issue. If the Commission see fit to make orders or to establish rules and regulations as to the qualifications

of physicians who may apply for licenses to conduct institutions, it is perfectly competent for them to do so, and, in their discretion, to alter, amend or amplify any rule, regulation or order so made. If the commissioners, in the exercise of authority conferred upon them by statute, sees fit to establish an order or regulation prescribing that a person applying for a license must have at least five years' actual service as a physician in a hospital *exclusively* for the care and treatment of the insane, it is perfectly competent and within the discretionary powers granted them by statute to do so.

Yours respectfully,

WILLIAM S. JACKSON,
Attorney-General.

State Institutions — Utica State Hospital, Rochester State Hospital.

Construction chapter 561, Laws of 1907 (State Finance Law), regarding receipt of moneys from industrial pursuits, coffee roasting, butter manufacture and printing blanks.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 15, 1907.

Hon. T. E. McGARR, *Secretary, State Commission in Lunacy, Albany, N. Y.:*

Dear Sir.—Replying to your request of the 13th inst., for my opinion as to the proper construction of chapter 561, Laws of 1907:

It appears from your communication that for fifty years it has been considered necessary by public authorities, having charge of the insane, to keep the patients occupied in industrial pursuits, and that for many years last past the inmates of the Utica State Hospital have been employed in coffee roasting and grinding and the product has been distributed among other State Hospitals, and a proper adjustment of the value thereof has been made

in the accounts between such hospitals. The practice has involved the purchase by the Utica State Hospital of the necessary raw material, and was expressly legalized by chapter 326, Laws of 1900. Under that arrangement the industry has been self-sustaining, and the officers of the Utica State Hospital, from the returns received for the product supplied to other state hospitals, have reimbursed the Utica State Hospital for the cost of the product, and that fund in turn has been used for the purchase of raw material and for the defraying of the other expense incidental to the work.

By chapter 561, Laws of 1907, as approved July 8, 1907, section 37 of the Finance Law, has been changed to read as follows:

“Section 37. Monthly payments to State Treasurer.—Every State officer, employee, board, department or commission receiving money for or on behalf of the State from fees, penalties, costs, fines, sales of property or otherwise, except the health officer of the port of New York, shall on the fifth day of each month, pay to the State Treasurer all such money received during the preceding month and on the same day file a detailed verified statement of such receipts with the Comptroller who shall keep an account thereof in his office. This section shall not apply to the manufacturing fund of the State prisons, known as the capital fund, nor to the convict deposit and miscellaneous earning fund of the State prisons. This section shall be deemed to supersede any other provision of this chapter, or of any other general or special law inconsistent therewith.

“Section 2. This act shall take effect July first, nineteen hundred and seven.”

The effect of this change in the statute requires the officers of the Utica State Hospital to return to the State Treasurer monthly, the moneys received from other hospitals on account of coffee furnished to them. Manifestly, this would eventually deprive the management of the necessary funds to continue the work, unless there is some other authority for it.

The Legislature appropriated the sum of \$235,000 or so much thereof as may be necessary, for the maintenance of the Utica State Hospital by the general appropriation bill of this year.

If the roasting of coffee by the inmates of the Utica State Hospital was to be treated simply as an industrial occupation with a view to financial profit, this change in the statute might be deemed to have contemplated the termination of the work. But, since the purpose of the work is the occupation and benefit of the inmates, the expense necessary to the continuance should be deemed within the maintenance of the hospital. Since to continue the work it will be necessary hereafter to purchase the raw material and meet the incidental expenses from the maintenance fund, in my opinion such use of the maintenance fund will be lawful and proper.

The same conclusion will apply to the manufacture of soap at the Rochester State Hospital and of printing blanks at the Utica State Hospital, and of the manufacture of butter at the St. Lawrence State Hospital.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

State Institutions — Hospitals.

Hudson River State Hospital. Items in Supply Bill of 1906, providing for sun room. Whether moneys are available.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 5, 1907.

Hon. T. E. McGARR, *Secretary, State Commission in Lunacy, Albany, N. Y.:*

Dear Sir.—Replying to your request of the 3d inst. for an opinion. You state:

“Chapter 686, Laws of 1906 (Supply Bill), provided (on page 1854) among other items for the Hudson River State Hospital the following:

“ ‘For porch and sun room, ward 11, three thousand two hundred dollars (\$3,200); for sun room, wards 3 and 7, three thousand two hundred dollars (\$3,200).’

“After this appropriation had been granted the Superintendent of that institution decided that it would be preferable to transfer the location of the porch and sun rooms to another portion of the hospital buildings; accordingly the Commission caused to be inserted in the Supply Bill of the present year, (Assembly Bill 2916), the following:

“ ‘The sum of three thousand two hundred dollars (re. \$3,200) appropriated by chapter six hundred eighty-six, laws of nineteen hundred six, for porch and sun rooms, ward eleven, Hudson River State Hospital, and the sum of three thousand two hundred dollars (re. \$3,200) appropriated by the same chapter for sun rooms, wards three and seven at the Hudson River State Hospital are hereby reappropriated for sun rooms for wards twenty-three and twenty-four, central group, and for day room for wards twenty-six and twenty-seven, E one and E two at the same hospital.’

“When the Supply Bill reached the Governor he failed to approve of the proposed substitution and in a general memorandum referring to this and other items made the following comments:

“ ‘The items mentioned in this paragraph are objected to as either unnecessary, or as applying to cases not involving any obligation on the part of the State, or, in view of the demands upon the Treasury, as inexpedient at this time. So far as they relate to needed repairs or emergency outlays in connection with State institutions, sufficient provision is made by other appropriations.’ ”

The failure of the Governor to approve the item quoted by you in the supply bill of the present year, left the supply bill of 1906 unaffected so far as the latter bill made provision for a porch and sun room for ward eleven and for a sun room for wards three and seven of the Hudson River State Hospital.

Under the Constitution, article III, section 21, the supply bill of 1906 is in force for two years and the amount carried therein is therefore still available to the Commission for the purpose specified in the Act of 1906.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

OPINIONS RENDERED THE STATE COMMISSIONER OF AGRICULTURE.

Agricultural Law — Section 65.

Quarantine regulations, enforcement of by Sheriff of Westchester county. Whether payable by county or State.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, March 5, 1907.

*To the Honorable, the Commissioner of Agriculture, Albany,
N. Y.*

Dear Sir.—Replying to your favor of recent date, inquiring as to whether the charges for the enforcement of quarantine regulations by the sheriff of Westchester county, under section 65 of the Agricultural Law, were payable by the county or by the State, I advise you that the State would not be liable to the sheriff for any compensation or expenditures incurred in the enforcement of said quarantine regulations.

“Each public officer upon whom a duty is expressly imposed by law, must execute the same without fee or reward, except where a fee or other compensation therefor is expressly allowed by law.” (Section 3280, Code of Civil Procedure.)

The office of sheriff of Westchester county is a salaried office, “in consideration of which he shall do or perform all duties now,

or which may hereafter be imposed upon him by law." (Laws 1895, chapter 88, page 124.)

The law imposes a duty upon the sheriff in his official capacity providing that the Commissioner of Agriculture "may call upon the sheriff or deputy sheriff to carry out and enforce the provisions of any notice, order or regulation, which he may make, and all such sheriffs and deputy sheriffs shall obey and observe all orders and instructions which they may receive from him in the premises." (Section 65, Agricultural Law.)

If said sheriff should be entitled to be reimbursed for moneys necessarily expended in the enforcement of said quarantine regulations, it would be a charge against the county as provided in subdivision 9 of section 230, article 13 of the County Law.

Yours respectfully,

WILLIAM S. JACKSON,
Attorney-General.

Agricultural Law — Pure Food Law — Labels.

Articles labeled as "Maple Butter," "Maple Cream," which are not composed wholly of maple sap.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, March 7, 1907.

To the Honorable, the Commissioner of Agriculture, Albany, N. Y.:

Dear Sir.—I am in receipt of your favor of recent date, containing requests for opinions upon the following questions:

First. Can an article of food of the following ingredients: Maple syrup, corn syrup and cane syrup, be sold under the name of "Maple Butter," provided the above-named ingredients are stated in the packages, and comply with the provisions of sections 91 and 92 of article 6 and sections 164 and 165 of article 11 of the Agricultural Law?

Second. Can an article of food be sold under the name of "Maple Butter," or "Maple Cream," that is not composed wholly of the product of maple sap?

Third. Can an article of food that contains no other ingredient except sugar made from pure maple sap or pure maple syrup be sold under the name of "Maple Butter" or "Maple Cream?"

Replying to your first inquiry, I am of the opinion that maple butter, an article composed of the ingredients therein mentioned, with such ingredients set forth upon the label, may be sold under the name of maple butter, without violating any provision of the Agricultural or Pure Food laws. The article is not sold in imitation or semblance of maple sugar or maple syrup, and is not intended to deceive the purchaser, because the ingredients thereof are plainly set forth upon the wrapper and such ingredients are not injurious or deleterious to public health.

As to your second inquiry, it is my opinion that an article could not be sold under the name of maple butter or maple cream unless said article is composed wholly of the product of pure maple sap, unless said article is sold as a compound and plainly labeled or branded so as to show the character or constituents thereof, so that the purchaser may not be deceived into the belief that the article is a product of pure maple sap.

Referring to your third question, it is my opinion that an article which is made wholly from the pure maple sap, may be sold under the name of maple butter or maple cream, since no deception is thereby practiced upon the purchaser, and such purchaser is receiving the product of the pure maple sap in the form or consistency of butter or cream, which is exactly what the name would indicate, and said article not being injurious to public health.

Yours respectfully,
WILLIAM S. JACKSON,
Attorney-General.

Agricultural Law.

Shipment of calves under age as articles of food. (Section 70-e.)

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 1, 1907.

*To the Honorable, The Commissioner of Agriculture, Albany,
N. Y.:*

Dear Sir.—Replying to your inquiry of recent date, relative to the power of the agents of your department to seize calves uncrated and unaccompanied by their dams in process of shipment from a point within to a point without the State:

The Legislature has recognized the fact that veal, as an article of food, is injurious and unsafe when eaten within four weeks of its birth, and therefore, has enacted laws to protect the public against the use and sale of such veal as an article of food. (Section 70-e of the Agricultural Law.)

The provisions that “any person or persons shipping any calf for the purpose of being raised, if said calf is under four weeks of age, shall ship it in a crate, unless said calf is accompanied by its dam,” was apparently enacted with a view to securing the enforcement of the law for the protection of the people against the sale and use of unhealthful veal. True, such provision is broad enough to apply to calves shipped from a point within to a point without the State, but still does not invade the constitutional right of Congress to regulate commerce between the states. It is a reasonable provision within the police power of the State, relating to public health, and violates no provision of the State or Federal Constitutions.

People v. Niagara Fruit Co., 75 App. Div. 11, affirmed 173 N. Y. 629.

Plumley v. State of Massachusetts, 155 U. S. 472.

Crossman v. Luhrman, 192 U. S. 197.

This section does not prohibit the shipping of calves, but provides that they shall be shipped in such manner as not to deceive the public into the belief that said calves have reached a safe and healthful age for use as food. Such provision being valid and constitutional, it is of obligatory force, upon citizens within

the territorial jurisdiction of the State, even though engaged in interstate commerce and the State, has power to compel the observance of the provisions of said section 70-e.

People v. Bishop, 106 App. Div. 266.

Kidd v. Perason, 128 U. S. 23.

Yours respectfully,

WILLIAM S. JACKSON,

Attorney-General.

Agricultural Law—Pure Food Law.

Labels, "Snyder's Salad Dressing," and "Durkee's Salad Dressing."

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 9, 1907.

*To the Honorable, The Commissioner of Agriculture, Albany,
N. Y.:*

Dear Sir.—Relative to the article of food sold on the markets of this State under labels which read as follows:

Snyder's Salad Dressing.

A delicious dressing for all kinds of salads, lettuce, chicken, lobster, cold meats, etc. Prepared with great care.

Salad Dressing,

Lutz & Schramm Co.

Durkee's Salad.

Dressing and Meat
Sauce. Prepared with
great care and only
from the purest and
choicest condiments ob-
tainable.

E. R. Durkee & Co.

New York.

It is my opinion that such labels are in compliance with requirements of the statute, and that a statement of the ingredients or constituents is not required. The labels would not tend to mislead the purchasing public, but do indicate that the article is a distinct and definite sort of salad dressing, and same may be sold without violating the statute unless the ingredients of the article are injurious or deleterious to public health.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Agricultural Law—Pure Food Law.

Label flavoring extract Van Oleum.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 9, 1907.

*To the Honorable, The Commissioner of Agriculture, Albany,
N. Y.:*

Dear Sir.—Relative to the manufacture and sale of the article of food under a label which reads as follows:

VAN OLEUM

(Trade Mark Registered)

A Compound Manufactured by
CORRIZO EXTRACT CO.

Office and Laboratory,
147-149 West 26th Street,
New York city, U. S. A.

Which said article appears to be a flavoring extract used in the place and stead of vanilla extract. In my opinion the manufacture and sale of this article under such a label is not in compliance with the Pure Food Law of this State, but the constituents of the article should appear on the label.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Agricultural Law — Pure Food Law.

"Prepared Salt," labeling and mixture of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, September 9, 1907.

*To the Honorable, The Commissioner of Agriculture, Albany,
N. Y.:*

Dear Sir.—Relative to the labeling of Prepared Salt, in which a small amount of cornstarch has been mixed to prevent hardening and to make a free running salt, it is my opinion that under a strict interpretation of the law, the mixing of corn starch with the salt would be a violation of the law, under subdivision 2 of section 165, relative to adulteration, unless the article was labeled so as to plainly indicate that it was a mixture or compound, and the character and constituents of said articles were set forth upon the label.

I am also of the opinion that the sale of such mixture under the name of "Prepared Salt" would not obviate the necessity of naming the other constituent, that is, corn starch.

This, however, seems to be an exceptional case. The amount of corn starch being very small and being added for the benefit and convenience of the consumer, it would in all probability be a difficult case in which to secure a verdict from a jury.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Agricultural Law — Pure Food Law — Labels.

Licenses for tags and labels "Crown Hominy Feed, Kiln Dried"
and "Susquehanna Hominy Chop."

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, December 28, 1907.

*To the Honorable, The Commissioner of Agriculture, Albany,
N. Y.:*

Dear Sir.—Replying to your inquiry of recent date as to whether Wilson & Woolven, having sold an article under the name of "Crown Hominy Feed, Kiln Dried," which brand was not licensed for sale in the State of New York, could later attach tags to the remaining packages upon which was printed the name of a different brand which had been licensed as "Susquehanna Hominy Chop."

The Commissioner of Agriculture would have no power to prevent the placing of proper labels or tags on the unsold portion of the commodity and the sale of such commodity under the name of a duly licensed brand, if the labels or tags contained the statement required by section 121, and the feeding stuff contained in said packages conforms to the statement affixed, such statement being affixed with the authority and under the direction of the manufacturer and party obtaining the license.

The Commissioner of Agriculture could not require a license for the brand named "Crown Hominy Feed, Kiln Dried," but could prosecute as violation of law for such as was sold, offered or exposed for sale under the name of such unlicensed brand.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

**OPINIONS RENDERED THE STATE COMMISSIONER
OF HEALTH.**

Public Health Law — Municipalities.

Sewage disposal system. Village of Mt. Kisco, expenses of providing for.

STATE OF NEW YORK,**ATTORNEY-GENERAL'S OFFICE,****ALBANY, June 3, 1907.**

HON. EUGENE H. PORTER, *Commissioner of Health, Albany.*
N. Y.:

Dear Sir.—Replying to your communication of March 11th last: It appears therefrom that a dispute exists between the authorities of the city of New York and the village of Mount Kisco as to which municipality shall bear the expense of providing a sewage disposal system for the village of Mount Kisco, adequate to protect the health of the inhabitants of that village and prevent contamination of the water supply of the city of New York.

The substance of section 7 of chapter 543 of the Laws of 1885, to which you refer, is now contained in section 72 of the Public Health Law, which, so far as it relates to this question, is as follows:

“When the State Department of Health shall for the protection of a water supply from contamination make orders or regulations, the execution of which will require or make necessary the construction and maintenance of any system of sewerage * * * in any village or hamlet * * * or the execution of which will require the providing of some public means of removal or purification of sewage, the municipality or corporation owning the waterworks benefited thereby shall, at its own expense, construct and maintain such system of sewerage * * * and provide such means of removal and purification of sewage and such works or means

of sewage disposal as shall be approved by the State Board of Health * * *. Until such construction or change of such system or systems of sewerage and the providing of such means of removal or purification of sewage and such works or means of sewage disposal * * * are so made by the municipality or corporation owning the waterworks to be benefited thereby at its own expense there shall be no action or proceeding taken by such municipality, officer, board, person or corporation against any person or corporation for the violation of any regulation of the State Board of Health under this article and no person or corporation shall be considered to have violated or refused to obey any such rule or regulation."

Your communication states that plans originating with the water department of the city of New York for the construction of a disposal plant at Mount Kisco have been approved by your department but that no other action has been taken, and that the authorities of the city of New York now refuse to undertake the construction thereof, and that such a situation has arisen as "requires the providing of some public means for the removal or purification of sewage" from such village.

It further appears that the State Board of Health, on March 15, 1899, acting under section 7 of chapter 543 of the Laws of 1885, made and published rules and regulations applicable to Mount Kisco, respecting the disposition of sewage, which prohibited the discharge of sewage into any stream or into any place that would flow into a stream so as to pollute the same, which rules and regulations were approved by a justice of the Supreme Court, as required by law.

You ask what are your powers and duties, and, if you have no power, what are the powers and duties of the village of Mount Kisco.

The statute does not vest your board with power to declare what public works are necessary to comply with the rules and regulations adopted by your board.

Under section 72 of the Public Health Law above quoted, the State Board of Health, by its approval of a plan to establish sewers

and a disposal plant at Mount Kisco by the municipality of the city of New York, has done all that the statute contemplates being done by said board. The State Commissioner of Health is not required to institute any proceeding or action to compel the owner of the water supply to comply with whatever its duty may be to construct such works. Pending such a construction, the statute expressly forbids any action or proceeding "by any such municipality, officer, board, person or corporation, for a violation of any regulation of the State Board of Health under this article, and no person or corporation shall be considered to have violated or refused to obey any such rule or regulation."

In the case of the *People ex rel. Board of Health v. Fries*, 109 App. Div. 358, it was held that the duties which could be enforced at the instance of a Board of Health were only such duties as were enjoined by article II of the Public Health Law upon boards or officers created by the same article. The municipality of New York would not come within that description. Whether that city is bound by force of section 72 of the Public Health Law to construct and maintain a system of sewers and a sewage disposal plant at Mount Kisco is a question which may be determined between those municipalities by appropriate application to the court by the authorities of Mount Kisco.

The powers of the State Commissioner of Health are only those with which the Legislature vests him, and it is competent for the Legislature to withhold from him the power to institute any proceeding to enforce the construction of the works here involved. It does not follow, however, that the public is without any means to protect itself in the meantime. At common law, the pollution of a stream by the discharge of sewage therein, or any nuisance dangerous to public health may be abated by criminal prosecution or suit at the instance of any person specially affected.

So far as the same acts which would constitute a nuisance at Mount Kisco would be acts forbidden by the rules of the State Board of Health, the prohibition in section 72 would not be effective to interfere with the common-law remedy. So far as that section may attempt, pending the construction of the works referred to, to stay common-law remedies and the inherent powers of the courts, in respect to the protection of the public health, it is in my opinion, of doubtful validity.

Any citizen of Mount Kisco, specially injured by any existing nuisance arising from acts prohibited by the rules referred to, may maintain an action for damages or to restrain any person committing such acts. A riparian owner on the streams of the watershed so polluted may do likewise. It would be the duty of a grand jury to return an indictment where a public nuisance exists.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Public Health Law — Power of local boards to increase compensation of health officers.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 2, 1907.

HON. EUGENE H. PORTER, *State Commissioner of Health, Albany, N. Y.:*

Dear Sir.—Replying to your request for my opinion upon the power of local boards of health to increase the compensation of health officers during the terms of office of such officers.

Section 20 of the Public Health Law as amended by chapter 253 of the Laws of 1906 provides as follows:

“In towns, the board of health shall consist of the town board and another citizen of the town of full age, biennially appointed by the town board at a meeting thereof after each biennial town meeting for the term of two years from and after such town meeting and until his successor is appointed. The State Commissioner of Health shall appoint for each municipality except in the cities of the State, on the nomination of the local board of health, a competent physician, not a member of the board of health, to be the health officer of the

municipality. The term of office of a health officer shall be four years and he shall hold office until the appointment of his successor."

Section 21 of the Public Health Law as amended by chapter 39 of the Laws of 1906 provides as follows:

"Every such local board shall prescribe the duties and powers of the local health officer, who shall be its general executive officer, and direct him in the performance of his duties, and fix his compensation. In addition to his compensation so fixed, the board of health may allow the reasonable expense of said health officer, in going to, attending and returning from the annual sanitary conference of health officers, or equivalent meeting held annually within the State, and may also within its judgment, when the services rendered by this health officer during any year are extraordinary or extra hazardous by reason of epidemic or otherwise, allow to him such further sum, in addition to said fixed compensation, as shall be audited by the town board of a town or by board of trustees of a village, which said expenses and said additional compensation shall be a charge upon and paid by the municipality as provided in section 30 of this act."

You are advised that under the above statutes, when the local board of health fixes the compensation of a health officer, the regular compensation is not subject to increase during the regular term of that officer. Additional compensation may be allowed to him when his services during any year have been extraordinary or extra hazardous by reason of epidemic or otherwise, but such allowance can only be made when the occasion mentioned in the statute occurs and is then subject to the audit of the town board or board of village trustees before the health officer becomes entitled thereto.

Under the above statutes providing that the term of office of the board of health shall be two years and that of the health officer four years, it will follow that the power of original appointment and fixing of salary will only be enjoyed by every other board of health taking office in succession.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Public Health Law — Section 26 — Nuisances.

Authority of local boards of health to effect discontinuance of earth closets.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 16, 1907.

HON. EUGENE H. PORTER, *Commissioner of Health, Albany, N. Y.*:

Dear Sir.—Replying to your recent request for an opinion as to the authority of local boards of health to effect the discontinuance of earth closets, etc. and as to the validity of ordinances prohibiting maintenance of such closets, etc. in certain places:

The Public Health Law, section 26, provides as follows:

“ If the owner or occupant of any premises fails to comply with any order or regulation of any such local board for the suppression and removal of any nuisance or other matter, in the judgment of the board detrimental to the public health, made, served or posted as required in this article, such boards or their servants or employees may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter * * *.”

Under the above statute the board of health of the city of Cohoes recently adopted and published an ordinance providing as follows:

“ No owner, lessee, occupant or agent of any building or premises shall maintain within the city any privy vault or cesspool made or built in the earth within 25 feet of any door or window of any residence upon such premises or any residence upon adjoining premises and such maintenance of any privy or privy vault shall be declared to be public nuisance and a condition detrimental to life and health * * *.”

Thereafter the owner of certain premises having maintained a closet in violation of the ordinance was required by notice from the board to remove the same, but omitted to comply with the

notice. Thereupon the board of health made an investigation and took proof of the facts and declared the particular closet to be a nuisance and directed the health officer to notify the owner to abate the same within five days. or in the event of the owner's failure so to do, the health officer was directed to enter upon the premises and perform the necessary work to abate the nuisance. The owner failing to abate it the health officer entered and abated it. In an action brought to test the reasonableness of the ordinance and the legality of the procedure had under it, it was held (*Cartwright v. City of Cohoes*, 39 App. Div. 69, affirmed in 165 N. Y. 631) that the ordinance was reasonable and valid and the action of the board of health thereunder was legally justified. The court, in that case, further said that the board of health, having duly made and published such rules, was under no duty to give an owner a hearing or take testimony, but might make its own inspection and act summarily, if the board found that a particular nuisance actually existed.

The above case justifies the enactment of an ordinance of the nature described and may be relied upon as a safe guide for the procedure of local boards of health in the abatement of nuisances.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

OPINIONS RENDERED THE STATE SUPERINTENDENT OF BANKS.

Banking Law — Section 156 — Corporations.

Restriction regarding loans to directors or officers of company.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 23, 1907.

HON. CHARLES H. KEEP, *Superintendent of Banks, Albany, N. Y.:*

Dear Sir.—In reply to your letter of March 22d last, inquiring whether the restriction contained in subdivision 11 of section 156 of the Banking Law, to wit:

“ * * * No loan exceeding one-tenth of its capital stock shall be made by any such corporation (directly or indirectly) to any director or officer thereof and such loan to such director or officer shall not be made without the consent of a majority of the directors,”

includes a loan to a firm or copartnership of which a director or officer of a trust company is a member.

The Banking Law (chapter 689, Laws 1892), originally provided in subdivision 10 of section 156:

“No loan shall be made by any such corporation, directly or indirectly, to any director or officer thereof.”

By chapter 660 of the Laws of 1901 the statute was amended to its present form permitting a loan to a director or officer of the company to the extent of one-tenth of the capital stock, when made with the consent of a majority of the directors, but forbidding a loan in a greater amount, “directly or indirectly,” to such director or officer.

If the words "directly or indirectly," mean anything at all, they are certainly plain and broad enough to extend the statutory restriction to a loan by a trust company to a firm or copartnership in which a director or officer of a trust company is a member. Each partner is individually liable for all the partnership indebtedness and this fact alone would furnish to the director or officer as strong a motive for an excessive loan of trust funds to the firm as would inspire such a loan to himself individually. In either case a trustee is placed in a position of conflict between individual interest and official duty which public policy and good morals would prohibit.

Our laws, designed to safeguard the stability of financial institutions, are frequently shown to be inadequate and, such as they are, they should be so construed as to give them the full force and effect intended.

I am aware that my opinion is at variance with that of former Attorney-General Mayer, given your Department upon the 3d day of December, 1906, wherein a distinction is sought to be made between partnerships formed in good faith and partnerships formed in bad faith and the restriction of the statute limited to a case "where a partnership is a mere device and the loan, while made on its face to a partnership, is really made upon the sole credit of the individual who is a director."

The statute makes no such distinction and the application of such a rule would be impracticable. If the loan to the copartnership is a direct or an indirect loan to the director or officer, the question of good faith in the formation of the partnership or of the quality of the security is immaterial.

The true test is, who is the beneficiary of the loan and in my opinion the restriction of the statute applies to a loan to a firm or copartnership of which a director or officer of a trust company is a member, whether the copartnership has been formed in good or in bad faith and whether the loan is made upon the sole or joint credit of such director or officer.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Banking Law, Section 161 — Stock Corporations Law, Section 21.

Trust Companies change in number of directors to be made by conforming with provisions of the two statutes.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 22, 1907.

HON. CHARLES H. KEEP, *Superintendent of Banks, Albany, N. Y.:*

Dear Sir.— You ask me whether a trust company in a proceeding for a change in the number of its directors it may elect, shall pursue the method prescribed by section 161 of the Banking Law, or the method provided for by section 21 of the Stock Corporations Law at its pleasure.

There appears to be no conflict between the provisions of the Banking Law and section 21 of the Stock Corporations Law, relative to the subject of changing the number of directors.

While the provisions of the two acts relate to the same subject-matter, yet they are not in conflict with each other, and, therefore, in conformity with the rule laid down in section 33 of the General Corporations Law, the provision in the Banking Law must be deemed to be in addition to the provisions contained in the Stock Corporations Law relating to the same subject-matter, and both provisions must be regarded as applicable to the proceeding to change the number of directors.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Banking Law—Subdivision 1, Section 25.

Whether word "corporation" includes municipal corporations.
Loans by banks and trust companies, limit of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE.

ALBANY, July 2, 1907.

To the Honorable, the Superintendent of Banks, Albany, N. Y.:

Dear Sir.—I have your request for an opinion as to whether the word "corporation" as used in subdivision 1 of section 25 of the Banking Law refers to private corporations only, or includes municipal corporations, and whether loans to a city of this State by a State bank of deposit and discount or a trust company of the State, upon its unsecured note or certificate of indebtedness, are limited to ten per cent. of the capital and surplus of the bank or trust company making them.

The General Corporation Law provides that "a corporation shall be, either, 1, a municipal corporation, 2, a stock corporation, 3, a non-stock corporation, or 4, a mixed corporation."

Section 25 of the Banking Law as amended by chapter 456 of the Laws of 1905, provides that:

"No bank or trust company shall make any loan or discounts to any person, company, corporation or firm, or upon paper upon which any such person, company, corporation or firm may be liable to an amount exceeding one-tenth part of its capital stock and surplus."

This amendment made a substantial change in the provisions of section 25 as it stood prior thereto, and limited the maximum amount of loans or discounts to the persons therein named to one-tenth of its capital stock and surplus, instead of one-fifth, previously authorized. The section was further amended by placing the maximum amount that could be loaned upon collateral security at 40 per cent., instead of 50 per cent., of the capital stock and surplus of such bank or trust company.

The obvious purpose of this provision of the statute is to protect the funds of banks and trust companies. The Legislature undoubtedly intended to safeguard, as far as practicable, the funds of such institutions and to prevent the loan of any considerable portion thereof to one person. It clearly meant to say that it regarded it the better and safer policy that loans should be made to many, rather than to few persons, and it must be presumed that the Legislature, in enacting section 25 of the Banking Law, as amended, had in mind the provisions of the statute defining a corporation. The word "corporation" as used in section 25 is certainly broad enough to cover a municipal corporation, and I think it is further to be presumed that if the Legislature intended to exclude municipal corporations from the operation of that section, that it would have done so by express enactment. But it did not exclude municipal corporations from the provisions of the act and I think that the reasons that apply to the prohibition of loaning more than ten per cent. of the funds of a bank or trust company to an individual, firm, company or commercial corporation, are applicable to the making of such loans to a municipal corporation. If section 25 does not apply to municipal corporations then there is no limitation upon the amount that a bank or trust company may loan to a municipal corporation, and it might very easily happen that a bank or trust company that had loaned the greater portion of its funds to a municipal corporation would be unable, in times of necessity, or financial distress, to find a ready or any market for the securities of such municipal corporation that it held, and would thus be embarrassed or unable to meet the demands of its depositors.

I am therefore of the opinion, in view of the evident intention of the Legislature to prohibit the loaning of the funds of banks and trust deposit companies to one person, that the word "corporation" in section 25 of the Banking Law includes municipal corporations and that banks and trust companies are not authorized to loan more than ten per cent. of their capital stock and surplus to a municipal corporation upon its unsecured note or certificate of indebtedness.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Banking Law—Section 131.

National Banks, State of New York, cannot advertise or do business as Savings Banks.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 2, 1907.

To the Honorable, The Superintendent of Banks, Albany, N. Y.:

Dear Sir.—Replying to your request for my opinion as to whether a national bank doing business in this State is prohibited from making use of the word “savings” in their banking business or from advertising or putting forth any advertising literature or signs as a savings bank, or in any other way soliciting or receiving deposits as a savings bank under section 131 of the Banking Law of this State, I beg leave to say:

The Supreme Court of the United States decided, in the case of the Logan County National Bank v. Townsend, 139 U. S., p. 67, that “the national banking act is an enabling act for all associations organized under it, and that a national bank cannot rightfully exercise any powers except those expressly granted by that act, or such incidental powers as are necessary to carry on the business of banking for which it was established. The statute declares that a national banking institution shall have power to exercise, by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing and circulating notes according to the provisions of title 62 of the Revised Statutes.”

Savings banks are not organized under the provisions of the national banking act referred to in the above opinion, and such national savings banks as exist are organized under special acts of Congress, and so far as I have been able to ascertain, exist only in the District of Columbia.

National banks are what are known as commercial banks, and

the distinction between this class of banks and savings banks has been recognized and clearly stated by the Supreme Court of the United States. In the case of the Bank of Redemption v. Boston, 125 U. S. 68, the Supreme Court said:

“It is alleged that in Massachusetts savings banks are permitted to transact a banking business in the way of loans upon personal securities, which assimilates them more closely to national banks, and takes away the reason for the application of the rule to them which was applied in the case of the savings bank of New York. But the difference mentioned, if it exists at all, is immaterial; the main purpose and chief objects of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the Mercantile Bank. They are substantially institutions under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase.”

Congress has enacted that: “All national banking associations established under the laws of the United States, shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits of equity, be deemed citizens of the State in which they are respectively located.”

National banks being citizens of the State are subject to all the laws of the State, where such laws are not in conflict with the statutes of the United States, relating to the organization, conduct and supervision of such banks.

The power to control and regulate national banks is discussed and defined in 21 Am. & End. Enc. of Law, 327, as follows:

“National banks are instrumentalities of the Federal government, created for a public purpose; and as such are necessarily subject to the paramount authority of the United States. It follows that an attempt by a State to define their duties or to control the conduct of their affairs, is absolutely void whenever such attempted exercise of authority expressly, conflicts with the laws of the United States, and either frus-

trates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were created. But national banks are subject to the laws of the State and are governed in their daily course of business far more by the laws of the State than by those of the nation. All their contracts are governed and construed by State laws; their acquisition and transfer of property, their right to collect their debts and their liability to be sued for debt are all based on State law. It is only when the State law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional."

This is an accurate statement of the law as gathered from the decisions of the State and Federal courts.

I am of the opinion that national banks are limited strictly to the powers conferred upon them by the acts of Congress; that such acts do not confer upon them the power or right to conduct savings banks; that they have not the right or authority in their banking business to hold themselves out as savings banks or to advertise themselves as such; and that section 131 of the Banking Law is applicable to all national banks doing business in this State.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Banking Law, Section 132 — Savings Banks.

Union Dime Savings Institution. Restriction in number of trustees.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 14, 1907.

HON. GEORGE I. SKINNER, *Acting Superintendent of Banks,*
Albany, N. Y.:

Dear Sir.—In your letter of the 1st inst. you ask the opinion of this office in regard to the power of the Union Dime Savings

Institution, of New York, to transact its business with a variable number of trustees.

It seems that the by-laws of said institution provide, among other things, that "the board of trustees shall consist of not less than fifteen nor more than twenty members." It is stated that the president and counsel of the said savings institution claim that the provision of the by-law, as quoted, was adopted in 1878, that at that time there was no provision as to number of trustees, and that the present law is not applicable.

In my opinion the position assumed by the president and counsel of the bank is untenable. The bank took its charter subject to the right of the State to alter, suspend or repeal the same in the discretion of the Legislature. In fact the Legislature did revise and amend the banking laws in 1892 by chapter 689. Under said act the charters of savings banks were conformed to the amended law by the provisions of section 132 of said law, which reads, in part, as follows:

"Section 132. Charter to be conformed to this chapter. The powers, privileges and duties, and all restrictions conferred or imposed upon any savings bank of whatever name known, of its charter or act of incorporation, are hereby abridged, enlarged or modified, as each particular case may require, in such manner that every such charter or act of incorporation shall be made to conform to the provisions of this chapter in relation thereto, and to such amendments thereof as may be hereafter made * * *."

It will be seen from the above that all incorporated savings institutions in this State became subject to the provisions of the Banking Law, as enacted in 1892, at the time said act took effect. It is, therefore, evident that the Union Dime Savings Institution is subject to all of the provisions of the existing law respecting the number of its trustees. Under the statute the corporation is restricted as to the minimum number of trustees, which may not be less than thirteen, so that it is permitted to prescribe the number of persons, not less than thirteen, to constitute the board of trustees, but the number must be definitely fixed and can only be changed in accordance with the provisions of section 107 of the Banking Law.

In every general law of this State relating to the management of corporations each statute provides that the operations of such corporations shall be managed by a board of trustees, directors or managers composed of a fixed and definite number, and there is no exception in favor of savings banks. This policy of the Legislature has been uniform, and I am unable to find any exception in favor of this particular class of corporations.

Whenever any corporation is now organized under the provisions of the revised banking laws, the certificate of authorization, issued by the Superintendent of Banks, specifies the number of trustees, and such number can only be changed thereafter in accordance with the statute. The Union Dime Savings Institution is subject to the same statutory regulations under the provisions of section 132, above quoted.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Banking Law — Trust Companies.

Whether trust company organized under the laws of the State of Pennsylvania, can act as trustee for bondholders under a mortgage given by a corporation organized under the laws of this State, upon lands located in this State.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE.

ALBANY, August 14, 1907.

HON. GEORGE I. SKINNER, *Acting Superintendent of Banks,*
Albany, N. Y.:

Dear Sir.—In your communication of the 26th ultimo you ask for the opinion of this office upon the following statement of facts, which you set forth as follows:

“In connection with the work of this Department, the question has arisen as to whether or not a trust company organized under the laws of the State of Pennsylvania and

doing business in that State, can legally act as trustee for the bond holders under a mortgage given by a corporation organized under the laws of the State of New York and located in this State upon lands located in this State."

Section 156 of the Banking Law prescribes the powers which are conferred upon trust companies organized under the laws of the State of New York. Subdivision 4 of said section reads as follows:

"Subd. 4. To act as trustee under any mortgages or bonds issued by any municipality, body politic or corporation. and accept and execute any other municipal corporate trust not inconsistent with the laws of this State."

It further provides in the last sentence of subdivision 11, of the same section, as follows:

"No foreign corporation shall have or exercise in this State the power to receive deposits of trust moneys, securities and other personal property from any person or corporation, or any of the powers specified in subdivisions 1, 4, 5, 6, 7, 8, 10 and 11 nor have or maintain an office in this State for the transaction of, or transact directly or indirectly, any such or similar business."

The above language clearly indicates the intention of the Legislature to restrict the business of acting as trustees under any mortgage to domestic corporations and to exclude foreign corporations from the right to exercise such power.

The statute seems so clear and explicit as to render more extended discussion of the subject unnecessary, except to call your attention to the fact that the provision expressly excluding trust companies from operations of this character, was adopted by the amendment of 1906, chapter 601, and therefore could not have been under consideration when questions of similar purport were considered by my predecessors in office.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Banking Law.

Mortgage, loan and investment corporations may conduct a general deposit business on complying with section 14.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 11, 1907.*

HON. GEORGE I. SKINNER, *Acting Superintendent of Banks,*
Albany, N. Y.:

Dear Sir.—Your favor of August 15th received, inquiring as to whether a corporation organized under the provisions of article 7 of the Banking Law, can do a general deposit business upon complying with the provisions of section 14 of the Banking Law.

Article 7 of the Banking Law relates to the organization of mortgage, loan and investment corporations and section 199 of that article provides that a corporation organized thereunder shall have power “to receive money on property either from its own stockholders or other persons in instalments or otherwise, and may enter into any contract, engagement or undertaking with such persons for the withdrawal of such money or property at any time with any increase thereof, or for the payment to them or to any person of any sum of money at any time either fixed or uncertain excepting that said corporation cannot do a general deposit business without complying with the provisions of section 14 of this chapter.”

It would seem under this provision that explicit power is given to such a corporation to do a general deposit business providing it does comply with the provisions of section 14 of the Banking Law and by making the deposits therein provided for.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, November 2, 1907.

HON. CLARK WILLIAMS, *Superintendent of Banks, 52 Broadway,
New York City:*

Dear Sir.— The gravity of the present financial situation which has been so fully recognized by both the Banking and Law Departments of the State in their attitude towards embarrassed banks and trust companies, imposes on both, in my judgment, a special burden of solicitude for the protection of persons in no wise responsible for the management of these institutions, though deeply concerned in their solvency.

The published accounts of methods pursued by certain trust companies toward men and women clamoring at their doors for payment of drafts would have furnished imperative grounds, under ordinary circumstances, for the suspension of liquidation of such companies. It is exceedingly important that the delay in taking action should not be abused to the injury of innocent persons, as it would be if the officers, directors or stockholders take advantage to withdraw their own deposits or to facilitate withdrawals by their favored business associates.

Your department having adequate facilities to ascertain everything concerning the methods under which these concerns continue to do business, will exercise them, I trust, for the purpose of fully protecting the interests of depositors on whose behalf alone forbearance by both departments has been exercised.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Banking Law, Sections 154, 159 — Trust Companies.

Securities representing capital investment, company may not hypothecate, but should retain physical possession of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, December 21, 1907.

HON. CLARK WILLIAMS, *Superintendent of Banks, Albany, N. Y.:*

Dear Sir.—Your letter of the 14th instant is duly received, in which you ask the following question:

“Will you kindly advise me whether in your opinion a trust company may hypothecate the securities representing its capital investment, for the purpose of securing a loan to it of money or otherwise, or whether the trust company should retain physical possession of these securities at all times?”

Section 154 of the Banking Law, contained in article IV of that statute, provides that no trust company shall commence business until its capital has been paid in in cash.

Section 159 of that law thus provides:

“The capital of every such corporation *shall* be invested in bonds and mortgages on unincumbered real property in this State to the extent of sixty per centum of the value thereof or in the stocks or bonds of this State or of the United States or of any county or incorporated city of this State duly authorized by law to be issued * * *.”

The language of this section is mandatory. The intent of the law seems clear. It is to protect the public in dealing with these institutions by requiring the capital thereof, regulated in amount according to the population of the places where the corporation is located, to be actually paid in and then kept intact by investment in the limited class of securities specified. To permit a trust company to borrow money on these securities or to hypothecate them would be in violation both of the spirit and letter of the law.

I, therefore, answer your question by stating that in my opinion a trust company may not hypothecate the securities representing its capital investment for any purpose, and it should at all times retain physical possession thereof.

Yours truly,

WILLIAM S. JACKSON.

Attorney-General.

OPINIONS RENDERED THE STATE SUPERINTENDENT OF ELECTIONS.

Election Law — Metropolitan Elections District.

Special election in Kings County, 14th Assembly District.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, February 23, 1907.

HON. WILLIAM LEARY, *State Superintendent of Elections for the Metropolitan Elections District, 27 William St., New York City.*

Dear Sir.—You request, under date of the 13th instant, an opinion in reference to a special election to be held on March 12th prox., in the 14th Assembly District, Kings County, and the 15th Assembly District, New York County, as follows:

“1. What are the qualifications of electors in regard to residence?”

“2. What is the effect of a removal from the election district in which an elector registered for the last general election and who now lives in the election district in which the special election is to be held?”

“3. What duties, if any, can be performed at the polls on the day of the special election above referred to by the Deputy State Superintendents of Election appointed under section 5 of the Metropolitan Elections District Law?”

"4. What are the qualifications and authority of the State Superintendent at the time of a special election, the same as at a general election?"

You are advised as follows:

In reference to the first question, article II of the Election Law provides as follows:

"If any special or other election, other than a general election shall be ordered or held in any city or village, the inspectors of election of the various election districts in which such special or other election is to be held shall meet in their respective districts at the place designated therefor on the second Saturday preceding such election, from eight o'clock in the forenoon to ten o'clock in the evening, for the purpose of revising and correcting the register of electors, as herein-after provided."

Section 33, subdivision 3 provides as follows:

"At the meeting of the board of inspectors in a city or village having five thousand inhabitants or more, for revising and correcting the register for any election other than a general election, the inspectors shall retain upon the register for their respective districts the names of all persons qualified to vote at such election in such district which appear upon the register of electors for the last preceding election in said district, except the names of such electors as are proven to the satisfaction of the inspectors to have ceased to be electors of such district since their names were placed upon such register, and shall, at such meeting, add only to such register the names of the persons qualified as electors who shall personally appear before the board * * *."

"In cities of the first class any elector who was enrolled upon the register in an election district of such city at the last preceding general election, and since that time shall have removed into another election district in the same city, who is otherwise qualified to vote at such special election, shall, upon demand, receive from the board of inspectors of the district in which his name was enrolled for such last preceding general election a certificate, duly signed by said board, of the fact that his name was upon such register and has been erased

because of such removal, and his name shall thereupon be erased from such register. Upon presentation of such certificate by an elector to the board of inspectors of the election district in which he resides, his name shall be placed upon the register for such district. The inspectors must note upon the register opposite the name of such elector the fact of such certificate of removal, specifying the election district from which he has removed. They shall carefully attach such certificate to the register."

The Election Law makes no other provision with regard to the qualifications of electors in regard to residence, than those which apply at general elections.

As to the second question, you are advised that the effect of the removal from the election district in which an elector registered for the last general election, and who now lives in an election district in which the special election is to be held, would be that, in order to become entitled to vote in the election district of his new residence, he would be required to apply to the board of inspectors of the district from which he removed, although that was outside of the 14th or 15th Assembly Districts, but within the city of New York. It would then be the manifest duty of such board to convene and furnish the elector with the certificate mentioned in the subdivision just quoted, and thereupon erase his name from their register. The elector must present the certificate so obtained to the board of inspectors of the district to which he removed. The latter board should thereupon place the elector's name upon the register for their district. The elector will then be entitled to vote in the district of his new residence.

As to the fourth question, you are advised: chapter 689 of the Laws of 1895, creating the Metropolitan Elections District Law, in its present form, section 1, reads as follows:

"Metropolitan Elections District.—The counties of New York, Kings, Queens, Richmond and Westchester, are hereby constituted a metropolitan elections district for the purposes of all elections for state officers hereafter to be held."

The Public Officers Law, section 2, reads as follows:

“Definitions.—The term ‘state officer’ includes every officer for whom all the electors of the State are entitled to vote, members of Assembly, * * * The term ‘local officer’ includes every other officer who is elected by the electors of a portion only of the State, every officer of a political subdivision or municipal corporation of the State, and every officer limited in the execution of his official functions to a portion only of the State. The office of a state officer is a state office. The office of a local officer is a local office.”

The Metropolitan Elections District Law provides as follows:

“Section 8.—Attendance and duties at polling places.—The State Superintendent may attend at any election, and each deputy superintendent shall, on election day, attend the election at the polling place to which he is assigned * *.”

The special election which is to be held in the 14th and 15th Assembly Districts for the election of Members of Assembly, is, according to the definition quoted, an election of State officers, and the purpose of the Metropolitan Elections District Law is to apply its provisions to all elections for State officers hereafter to be held in such districts.

You are advised, therefore, that the authority of the State Superintendent of Elections for the Metropolitan Elections District applies to the special elections to be so held.

You are advised as to the third question that by reason of the conclusion reached in regard to the fourth, the duties of the deputies who may be appointed by the Superintendent under section 5 of the Metropolitan Elections District Law are the same in character as would be required in connection with a general election. But since that section provides that the deputies appointed under it shall not, as such, be entitled to attend at the polling places on election day, they would have no duties to perform at the polls, at the special election to be held.

Yours truly,

WILLIAM S. JACKSON.

Attorney-General.

OPINIONS RENDERED THE STATE SUPERINTENDENT OF INSURANCE.

Insurance Law — Corporations.

Traders and Travelers Accident Company of New York — Insertion of certain clauses in contract.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, March 6, 1907.

To the Honorable, The Superintendent of Insurance, Albany, N. Y.:

Dear Sir.— Replying to your communication in which you ask for an opinion respecting certain clauses proposed to be inserted in a contract of insurance contemplated by the Traders and Travelers Accident Company of New York, to wit:

“DIVIDENDS”

“Should the member remain in continuous good standing without disability for three years from the date of this contract, and then terminate his membership, he shall be entitled to receive out of the surplus accumulations or reserve, a cash dividend as nearly equal to, but not to exceed fifty per cent. of the premiums paid by him during such period as such surplus will warrant.

“If the membership be not terminated as above, and continue for four years from the date of this contract, without disability, and then terminate, said member shall be entitled to receive out of such surplus accumulations or reserve, a cash dividend as nearly equal to but not to exceed sixty per cent. (60%) of the premiums paid by him during such period as such surplus will warrant.

“If the membership be not terminated as above and continue for five years from the date of this contract, without disability, said member shall be entitled to receive out of such surplus accumulations or reserve, a cash dividend as nearly equal to but not to exceed the above principal sum, as such surplus will warrant.”

On the subject of payment of cash dividends by corporations of the character of the above named, section 214 of the Insurance Law, provides as follows:

“ This article shall not prevent any corporation, association or society, authorized to do business hereunder, from paying out of surplus accumulations or reserve fund to its members such ratable cash dividends or crediting on assessments such ratable sums as they are now or may hereafter become entitled to by the terms of their contracts, provided that nothing contained in this article shall be construed to permit the contract promising any fixed cash payment to any living certificate or policyholder unless such corporation, association or society shall have deposited the sum of one hundred thousand dollars with the insurance department of this state * * *.”

It does not appear that the above-named company has not deposited the sum of \$100,000 pursuant to statute, but your communication necessitates the assumption that no such deposit has been made, and that the question involved is whether or not the clauses above mentioned constitute a contract for a fixed cash payment in contravention of the prohibition of the statute.

These clauses either provide for a fixed cash payment or are so ingeniously worded as to erroneously convey the impression that such a payment is intended.

It is against public policy to permit statements to be inserted in insurance contracts that tend to mislead or deceive policyholders.

In either view, the clauses quoted should be condemned.

Yours respectfully,

WILLIAM S. JACKSON.

Attorney-General.

Insurance Law.

Questions arising on report of Bankers' Life Insurance Company,
of the city of New York.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE.

ALBANY, June 1, 1907.

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.— You have submitted to this office certain questions and statements of facts concerning the Bankers' Life Insurance Company of the city of New York, arising on the report of the examination of the condition and affairs of the said company made by your Department.

The facts set forth by you are as follows:

“The company was organized in 1869 as a fraternal association under the name of the Bank Clerks' Mutual Benefit Association; in 1884 it incorporated as a fraternal corporation and continued as such down to June, 1893, when it reincorporated as an assessment or co-operative association under article VI of the Insurance Law; in 1894 its name was changed to the Bankers' Life Insurance Company of the city of New York, and in August, 1899, it reincorporated as a stock corporation under article II of the Insurance Law.

“During its existence as a fraternal organization (1869 to 1893) its contracts with its members were evidenced by certificates of membership, entitling the member to all the benefits secured by the constitution of the association; the pertinent provisions of the constitution being that upon a death or disability there should be levied upon each member an assessment of \$1.00, and the amount of the assessment should be paid to the member or his beneficiary.

“Upon the reincorporation in 1893, the members were divided into two classes, known as Class A and Class B, the former being the members of the fraternal organization and the latter being those thereafter admitted. The assessments of Class A were limited by the constitution adopted at that

time to \$1.00 per death or disability of that class and the amount paid to the beneficiary was fixed at not less than \$1,000. For the protection of Class A, it was provided that there should be set aside a special reserve annually, which should be equal to \$1.00 per thousand of the insurance of Class B, in force on the 31st day of December of that year. The policy contracts issued by the company, during its existence as an assessment association, provided for level premiums, with a further provision, called a "safety clause," by which, in case of a deficiency, the company might call upon the members for further premiums in the nature of an assessment.

"After its reincorporation as a stock company in 1898, the company issued the ordinary level premium policies of a stock company. * * * * *

"In the latter part of 1906, the company caused to be presented to the Appellate Division of the Supreme Court, First Department, three submissions on agreed statements of facts, with the intention of securing a judicial determination of these issues."

You state that your Department was not consulted in the preparation of the agreed cases, and, in your opinion, certain relevant facts were omitted; that the department asked leave to submit additional facts, but its application was denied.

You state further, as to the case of *Berryman v. Bankers' Life Insurance Company*, 103 N. Y. Supp. 695:

"The company in this case sought to recover or avoid liability for the dividends credited to the several policies during the years 1901, 1902, 1903, 1904 and 1905. In the record presented to the court it was assumed that in the year 1905, when the \$50.60 dividend, claimed by the plaintiff, was credited, the company had no surplus.

"On the 1st of January, 1905, the company did have a surplus of \$86,783.00 and upwards. During 1905 the company paid dividends to policyholders amounting to \$49,536.00.

"It was not until after the 31st day of December, 1905, and after valuing the company's policies that the deficit for

that year appeared. The record should have stated when the dividend of \$50.60 was credited to Berryman. On valuing the company's policies as of December 31, 1905, and after charging as a liability the sum of \$31,000.00 'dividends due policyholders' it was found that the capital of the company had been impaired by the sum of \$71,597.00. This deficit was subsequently and in April, 1906, made good by the stockholders of the company.

"At the time of the submission of the controversy the company had its capital of \$100,000 apparently unimpaired and in addition had a separate fund (the \$31,019.06 dividends due policyholders) out of which the plaintiff's claim might be fully paid without impairing the company's capital."

You state, relative to the Elder case, reported in 102 N. Y. Supp. 702, as follows:

"Franklin C. Elder v. Bankers' Life Insurance Company, in which case the plaintiff, in his demand for judgment, asked that his policies be valued as whole life policies, and the defendant, in its demand for judgment, asked that the submission of the plaintiff be dismissed and that it be decreed that a reserve on policies issued by it when it was an assessment corporation, between June of 1893 and August of 1899, equal to one year term policies, was in compliance with section 52 of the Insurance Law.

"In the Elder case: The record did not contain a copy of the plaintiff's policies nor any extracts therefrom; it was stated in the record that the plaintiff's policies were ordinary life policies and had been valued as such by insurance department, both of which statements were untrue.

"In determining the Elder case the following facts were, in the judgment of the department, essential:

"The plaintiff's policies should have been presented to the court. They were ten year renewable term policies containing statements of conditions and premiums. The conditions are to the effect that at the expiration of the ten year period the insured may withdraw the accumulations passed

to the credit of his policy and the policy should cease. Options were given to the insured to renew the policy for additional terms of ten years each upon payment of increased premiums as stated in the table attached to the policy. The premium charges set forth in the table annexed to the policy are equal to the net premium combined experience table at four per cent. plus a loading of about twenty-five per cent. This evidence was essential to determine whether the plaintiff's policies come within the exception mentioned in section 52 of the Insurance Law,—‘excepting such contracts as provide for a limited number of specified premiums.’

“The demand of the defendant that all its policies issued between 1893 and 1899 should be valued as one-year term policies required, if the court should decide to consider the question, evidence of the character of each kind of policy issued by the company during that period. It cannot be questioned but that many policies issued by the company during that period provided for a ‘limited number of specified premiums’ and also other cases providing for ‘special surrender values.’ ”

You also state in one communication, as follows:

“The policies issued by the company between 1893 and 1899, while level premium policies, contain the safety clause above referred to. In October, 1899, after the reincorporation as a stock company, the board of directors duly waived the safety clause, thus placing all the policies in this class upon a strictly level premium basis. Inasmuch as one-year term insurance reserve on an ordinary life policy is inadequate to meet insurance requirements in practice, the department valued all these policies as ordinary life policies and this was concurred in by the company down to the summer of 1906, when the claim was first made that they should be valued as one-year term insurances. The Attorney-General, in 1906, upheld the action of the department in so valuing these policies.”

You say further:

"There is, however, another class of ordinary life policies not covered by the decision of the court and which, in the opinion of the department, come within the exception in the statute as providing for specified surrender values. A copy of a policy of this class is herewith submitted, being policy No. 6084. It will be observed that on the face of the policy it provides:

'In consideration of the agreements contained in the application for this policy and of the conditions on the back hereof, all of which are made a part of this contract,' etc.

"On the back of the policy is a table, but turning to the second page will be found the 'condition referred to on the first page.' Then follow provisions for surrender values in the way of cash paid-up insurance and extended insurance. Turning again to the back of the policy, we find the tables of values described as

'Illustration of values calculated under this policy based on the assumption that the experience of the company will be according to the Actuaries' Rate of Mortality with interest at four per cent.'

"In the second column are given the cash surrender values 'as provided for in the first paragraph of conditions.' In the third and fourth columns are the paid-up insurance and extended insurance values 'as provided for in second paragraph of conditions,' and at the foot of the table is found, 'in addition to the above it is estimated that at the end of the accumulation period in either settlement there will be a considerable dividend realized this policy.'

"The company contends that the figures given in the table are merely estimates and that the word 'specified' in the statute must be given the meaning of 'guaranteed.' On the other hand, many policyholders claim that the values are guaranteed. Without passing on this question, the department is of the opinion that the surrender values are specified and the policies should be valued under section 84 of the Insurance Law."

Respecting the Kelshaw case, reported in 102 N. Y. Supp. 700, you say:

"Jonathan Kelshaw against Bankers' Life Insurance Company, in which the plaintiff asks judgment that the defendant be directed to create, maintain and keep a fund of one dollar a thousand and all its outstanding risks upon all business written and in force June 28, 1893, while the defendant asked for judgment that the submission of the plaintiff be dismissed and that it be decreed that it would fulfill its obligations to class A policies by maintaining the reserve called for by section 84 of the Insurance Law upon Class A policies and setting aside a mortuary fund of one dollar per thousand on all Class B business written between the 20th day of June, 1893, and the 21st day of August, 1899

* * *

"The record presented to the court assumes that Class B is confined to the policyholders of the period from June, 1893, to August, 1899. The omissions from this record are as follows:

"The certificate issued to the members prior to June, 1893.

"The constitution of 1894 showing the rights and liabilities of the members.

"The constitution of 1893 showing the rights and liabilities of the then members known as 'Class A' and the future members to be known as 'Class B'.

"The certificate of reincorporation of August, 1899, particularly article VIII, reading as follows:

"Assumption of liability. The Bankers' Life Insurance Company of the city of New York, reincorporated, shall be subject to the existing liabilities of the present company, including all contracts, policies or certificates with its members, and to the same extent as though not reincorporated as a stock corporation."

"That in June, 1893, there were 1175 members of Class A and in March, 1906, 673.

"That in March, 1906, the average age of the 673 members of Class A was over sixty. That on October 27, 1899,

the company duly adopted a resolution definitely fixing its liability on Class A policies to \$1,000 each.

"That on October 27, 1899, by-laws were adopted by the company, reading as follows:

" 'For the purpose of protecting the contracts of members prior to May 10th, 1893, (known as Class A) the board shall cause to be kept in a separate class, to be known as Class A, all certificate holders whose insurance shall be in full force and was in full force prior to May 10th, 1893. As long as any of such insurance or membership is outstanding, the board of directors shall cause to be annually set aside a sum of money the amount of which shall be equal to one dollar for each one thousand dollars of insurance that was in full force on the company's books on the 31st day of December preceding, and which had been issued subsequent to May 10th, 1893, which sum of money shall be paid into a fund designated Mortuary Reserve Fund of Class A.' "

You state that the total ultimate liability on account of Class A will be about \$675,000, and that the total income from this class, at one dollar per death, will be less than \$230,000, leaving a deficiency of about \$445,000, and that the reserve, computed as monthly term insurance, is only a little over \$1,000.

You say further:

"During 1906 thirty-one members of Class A died, involving the payment of \$31,000. The total contribution from this class during the year, if all assessments were collected, would have been about \$20,000. This leaves a deficiency of \$11,000. On December 31, 1906, there was about \$6,000,000 of insurance in force of the policies issued between 1893 and 1899, resulting in a contribution, according to the company's contention, of only \$6,000.

"This leaves the further sum of \$5,000 to be met from the other resources of the company. These deficiencies will increase from year to year, for the reasons that the contributions from Class A will grow smaller, the number of deaths will increase, and the amount of insurance issued between 1893 and 1899 will decrease by reason of lapse or maturity."

You say further that it is a fact that in a large number of these contracts the premium charged by the company does not equal the net premium for one year term insurance at the ages attained.

You say further that in the resolution of October 27, 1899, the company declared the Class A contracts to be "what is known as monthly term insurances," and that although the practice of the company is to collect the assessments monthly, the contract is not in its terms and effect a monthly term insurance, but is in effect an ordinary life policy, whose premiums are based upon an assessment theory.

Your first question is as follows:

"1. Should the dividends for 1905, credited during that year to the several policies, but not paid, be considered a liability of the company?"

The facts presented above show that at the beginning of the calendar year 1905, the company was in possession of a surplus amounting to \$86,724, and there is nothing to indicate that the surplus reserves were impaired at any time during said year.

It further appears that sometime during the year 1905 certain dividends were credited to several policies; however, no information is given as to the definite time upon which such dividends were credited. It may have been in the early part of 1905, at which time, according to your showing, the company had a surplus of more than \$86,000. It does not appear, from the facts presented by the Insurance Department, that the company did not have a surplus at all times during said year. This is stated in your first submission of the matter and reiterated in your letter of April 17th, in which you say that "it was not until after the 31st day of December, 1905, and after valuing the company's policies that the deficit for that year appeared."

It is a fair presumption that the dividends were credited at a time when the company's surplus justified the apportionment of dividends to policyholders, upon the theory that officers charged with certain duties are presumed to have performed those duties in accordance with the law. (*Uhlman v. N. Y. L. I. Co.*, 109 N. Y. 432.)

In the case of *Berryman v. Bankers' Life Insurance Company*

(102 N. Y. Supp., p. 695), it was held that the dividends of 1905 should not be made a liability charge against the company, but that case was decided upon an agreed statement of fact differing in essential particulars from the statement of facts hereinbefore recited and submitted to me by your Department.

In the Berryman case, it was stipulated that the entire surplus had been wiped out at the time when the dividends were apportioned. This vital discrepancy between the stipulated facts which guided the court in that case, and the facts as submitted to me by your Department renders that decision ineffectual for your guidance, and you are therefore compelled to rely upon the facts in your possession and regard the dividends credited during 1905, as a liability of the company.

The question submitted by you as number two is subdivided into two propositions, as follows:

2. (a) Should the ordinary life policies issued by the company between June 1893 and August 1899, be valued as one year term insurances, under section 52 of the Insurance Law, and

(b) Do the policies containing the tables of surrender values, come within the exceptions set out in that section of the Insurance Law?

Section 52 above cited seems to have been enacted for the purpose, among other things, of meeting precisely the situation presented with reference to the two classes of policies, referred to in both subdivisions of your question No. 2.

The portion of that section pertinent to the first inquiry reads as follows:

"In the case of any corporation organized under or subject to article six of the insurance law, which corporation has amended its charter and is now operating under article two of the insurance law, all contracts, policies and certificates issued prior to its reincorporation, shall be valued as one year term insurance at the ages attained, excepting when such contracts, policies or certificates shall provide for a limited number of specified premiums or for specified surrender values in which case they shall be valued as provided in article two, section eighty-four of the insurance law."

In considering this question it should be borne in mind that the Bankers' Life Insurance Company was a corporation organized under article 6 of the Insurance Law; that it has amended its charter and is now operating under article 2 of the said law; and that it has outstanding policies issued prior to its reincorporation. It will be readily seen, therefore, that the provisions of section 52, above quoted, apply to this corporation, and the class of policies which you mention in subdivision "A" of question 2, would necessarily be valued as one year term insurance under said section 52, but in a supplemental communication you have made this statement, to wit:

"In determining the Elder case the following facts were, in the judgment of this department, essential; the plaintiff's policies should have been presented to the court. They were ten-year renewable term policies containing statements of conditions and premiums. The conditions are to the effect that at the expiration of the ten-year period the assured may withdraw the accumulation passed to the credit of his policies and the policy should cease; options were given to the insured to renew the policy for additional terms of ten years each upon payment of the increased premiums, as stated in the table attached to the policy. The premium charges set forth in the table annexed to the policy are equal to the net premium combined experience table at four per cent. This evidence was essential to determine whether the plaintiff's policies come within the exceptions mentioned in section 52 of the Insurance Law * * *. The demand of the defendant that all its policies issued between 1893 and 1899 should be valued as one-year term policies required, if the court should decide to consider the question, evidence of the character of each kind of policy issued by the company during that period. It cannot be questioned but that many policies issued by the company during that period, provided for a 'limited number of specified premiums' and also other cases providing for 'specified surrender values'."

It will be seen at a glance that the Attorney-General is confronted with the same lack of evidence of the character of each

kind of policy issued by the company, which embarrassed the court in the Elder case. I can determine, however, in a general way as to those policies, like policy number 6084, which has been submitted, and which contained tables of cash surrender values, that such policies fall within the exceptions provided for in section 52, relative to policies which provide for a limited number of specified premiums or for specified surrender values, and that such policies should be valued in accordance with section 84 of the Insurance Law, which provides as follows:

“Section 84. The superintendent of insurance shall annually make valuations of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance company doing business in this State. All valuations made by him or by his authority shall be made upon the net premium basis, etc.”

Your third question reads as follows:

3. (a) Should the company be charged as a liability with a special reserve (mortality reserve fund of Class A) to an amount equal to \$1 per thousand of insurance written by the company after June, 1893, and in full force on the 31st day of December, 1905;

(b) Should the Class A contracts be valued as one-year term insurances and in case the premiums charged on that class are not equal to the net premiums for one-year term insurance at the ages attained, should the company be charged with a further reserve provided by section 85 of the Insurance Law?

As to subdivision (a) of this question I am of the opinion that you should refuse to permit the limiting of the assessment of one dollar per thousand to that portion of “Class B” insurance written prior to 1899. The court in the Kelshaw case arrived at a different conclusion on this point; but it must be noted that the agreed statement of facts in that case assumed that “Class B” included no insurance except that written prior to 1899, whereas the facts as you submit them to me show that “Class B” is not so limited, but includes policies written both before and after the year 1899. That this variance is of vital importance will appear from a consideration of other facts submitted to me. When the Company waived the safety clause, hereinbefore referred to, it

evidently attempted to establish an adequate substitute in the adoption of a resolution in 1893 for the creation of a special reserve by setting aside annually for "Class A" an amount equal to one dollar per thousand of the insurance of "Class B", which latter class was composed of all insurance contracts made subsequent to the reincorporation of 1893. A further fact to be considered is that the certificate of reincorporation of 1899 contained the provision:

"Article VIII. Assumption of liability.—The Bankers' Life Insurance Company of the City of New York, re-incorporated, shall be subject to the existing liabilities of the present company, including all contracts, policies or certificates with its members, and to the same extent as though not re-incorporated as a stock corporation."

Therefore, my conclusion is that the company is at this time legally bound to perform all the contract obligations which it has assumed in respect to Class A, among which is the duty to set aside this special reserve of one dollar per thousand on all "Class B" insurance, consisting of all policy contracts subsequent to 1893.

From your submission of facts it appears that in March, 1906, there were about 675 members of this class A, involving an ultimate liability of \$675,000. The total income from this class at one dollar per death will be less than \$230,000, leaving a deficiency of about \$445,000. The reserve computed as monthly term insurance is only a little over \$1,000.

During 1906 thirty-one members of this class died, involving the payment of \$31,000. To meet this liability there were the contributions from this class amounting, if all the assessments were collected, to about \$20,000, leaving a deficiency of about \$11,000. On December 31, 1906, the amount of insurance in force upon policies issued between 1893 and 1899 was about \$6,000,000 which would produce, at the rate of one dollar per thousand, the sum of \$6,000. Here there is a deficit of \$5,000 to be met from the other resources of the company and this deficiency must, of necessity, increase constantly during each succeeding year, if the mortuary reserve fund of Class A is to be restricted to insurance written during the six years ending August 21, 1899.

In these and other particulars the agreed statement of facts submitted to the court in the Elder case, differs materially from that submitted to me on the same subject by your Department. It is to be regretted that these several attempts to secure judicial determinations of these vexing questions should have so far proved abortive; but in respect to the valuation of these Class A certificates the practical consequences are not so important, inasmuch as whether they are to be valued as one-year term insurances as contended by the company, or under a provision which would secure a larger reserve, there must in either case be experienced a deficit which should be provided for pursuant to section 85.

As seen above, a valuation of this Class A insurance as one year term insurance amounts to less than \$1,000, and reduces the reserve provisions of the Insurance Law to an absurdity, because such valuation would be utterly inadequate. The whole life valuation should be applied in accordance with the provision of section 84, and even in the event of such a valuation there would be a deficiency necessitating recourse to section 85.

In the consideration of subdivision (b) of your question number 3, it should be observed at the outset that this company, by its several acts from first to last, passing from a fraternal society to an assessment company, waiving its safety clause provision for Class A, and thereby excluding that class from any possible fund adequate to meet its future liabilities, with frequent modifications of the character of the policies issued, easily puts itself in a class unique in the insurance world. An examination of the provisions of section 85 of the Insurance Law leads to the conclusion that said section was enacted for the purpose of providing for such an emergency as that here presented, and consequently your Department must ultimately resort to the provision of that section because the company has so circumstanced a portion of its policies that sections 52 and 84 alone are inadequate to meet the situation.

It does not relieve the present and future difficulties in the pathway of Class A certificates that the company on the 27th day of October, 1899, and after its re-incorporation as a stock company, declared its Class A contracts to be "definite insurance contracts for the amount of \$1,000 each," and also that "no assessments shall be levied nor collections made upon said class except as aforesaid," and also waived the "safety clause." All

this, it is true, added definiteness to this class of contracts; but this was of no great importance unless forfeited by some reasonable arrangement for a proper reserve or mortuary fund for the payment of the amounts of such definite contracts at maturity.

The contention that the Class A certificates fall clearly within the provisions of section 52 of the Insurance Law, as amended in 1901, should be answered as follows: That amendment to section 52 contemplated insurance business organized under article VI, and of a character such as these Class A certificates would have been without the modifications referred to, and that with these modifications the conditions of this Class A insurance cannot be disposed of under section 52 or section 84, or any section other than section 85, which provides:

“Section 85. When actual premium is less than net premium.—When the actual premium charged for an insurance by any life insurance corporation doing business in this state is less than the net premium for such insurance computed according to the table of mortality and rate of interest prescribed in this article, such corporation shall be charged as a separate liability with the value of an annuity, the amount of which shall equal the difference between such premiums and the term of which in years shall equal the number of future annual payments due on such insurance at the date of valuation.”

In conclusion I do not wish to be understood as raising any question respecting the soundness of the rulings laid down by the court in the cases referred to. My views, as hereinbefore expressed, are based upon a statement of facts radically different from those submitted to the court in those cases.

Yours respectfully,

WILLIAM S. JACKSON.

Attorney-General.

Insurance Law — Corporations.

Washington Life Insurance Company. Whether limitations of Sections 13, 16 and 100 apply to purchase money mortgages.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 12, 1907.

Hon. OTTO KELSEY, *Superintendent of Insurance*:

Dear Sir.—In connection with the application of the Washington Life Insurance Company for a ruling by your Department, you have submitted to this office the question whether the limitations of sections 13, 16 and 100 of the Insurance Law, respecting loans secured by mortgage upon real property apply to purchase money mortgages given to an insurance corporation on the sale by it of its real property.

It is provided, in section 13 of the Insurance Law, that corporations subject to the provisions thereof may meet the requirements as to deposits with the Superintendent of Insurance, by placing with your Department, among other securities mentioned, “bonds and mortgages on improved unincumbered real property in this State, worth fifty per cent. more than the amount loaned thereon.”

It is further provided, in the last sentence of section 100, that “any such corporation, in addition to other investments allowed by law, may invest any of its funds in any duly authorized bonds or evidence of debt of any city, county, town, village, school district, municipality, or other civil division of any State, and may loan, upon the security of improved unincumbered real property in any state worth fifty per centum more than the amount loaned thereon.”

Section 16 embodies the same restrictions in regard to investments.

The policy of the State is clearly restrictive as to the amount of a mortgage that may be taken by an insurance company upon real property, by expressly limiting the maximum amount thereof so that, in every case, the value of the property must be fifty per cent. more than the amount loaned thereon. The Legislature has

not attempted to differentiate between purchase money mortgages taken by the vendor and mortgages of any other character. The limitation was doubtless adopted to provide against any possible depreciation in value of the property or any tax liens or other encumbrances that might be suffered by the mortgagor to apply to the mortgaged property.

I am of the opinion that a mortgage taken for an amount exceeding this express limitation prescribed by the statute whether the same be a purchase mortgage or otherwise, could not be accepted by the Superintendent of Insurance as a deposit under section 13 of the Insurance Law, or as a proper investment under the provisions of sections 16 and 100 of the same law.

Yours respectfully,

WILLIAM S. JACKSON.

Attorney-General.

Insurance Law — Corporations.

Assets held by Lawyers' Title Insurance and Trust Company (merged) not to be deducted in annual report of Superintendent of Insurance.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 5, 1907.

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.—I have your letter of the 1st instant, in which you ask whether you should deduct from the assets of the Lawyers' Title, Insurance and Trust Company, for the purposes of your forthcoming annual report, certain stocks held by said company and various loans secured by collaterals.

Your question appears to be based upon the theory that said company is restricted in its investments and loans by the provisions of section 16 of the Insurance Law.

In reply I desire to say that I coincide with the views expressed in the opinion of the Attorney-General, bearing on this subject and rendered on April 11, 1905. In that opinion it was

stated that the above-named company, which is the result of a merger of the Central Realty, Bond and Trust Company with the Lawyers' Title Insurance Company, pursuant to the provisions of section 179 of the Insurance Law, has the full power of a trust company, organized under article IV of the Banking Law. In the opinion referred to, it was said that

“ Under the provisions of section 179, above quoted, it is apparent that whatever rights, privileges and franchises the Central Realty, Bond and Trust Company possessed became the property of and may properly be exercised by the Lawyers' Title Insurance Company, or as it is to be called under the terms of the merger, the Lawyers' Title, Insurance and Trust Company.”

The powers possessed by the Central Realty, Bond and Trust Company were conferred upon it by the special act under which it was incorporated, chapter 228, Laws of 1898, and the act amendatory thereof, chapter 140, Laws of 1900, and also possesses the powers conferred by the Banking Law, under article IV, section 163, of which it is provided as follows:

“ Every trust company incorporated by a special law shall possess the powers of trust companies incorporated under this chapter, and shall be subject to such provisions of this chapter as are not inconsistent with the special laws relating to such specially chartered companies.”

Upon examination of the acts above mentioned, it will be found that the company last above-named possessed the power to make loans upon real estate or other security, and also to invest in the stocks of other corporations. As the merged corporation retained all the rights and privileges belonging to the constituent company possessing the powers enumerated, it must follow that it has acted within its charter rights in acquiring the stocks of the other corporations, and in making the loan referred to in your communication; hence, such assets held by the merged company should not be deducted in the preparation of your annual report.

Yours respectfully,

WILLIAM S. JACKSON,

Attorney-General.

Insurance Law — Corporations.

United States Life Insurance Company. Whether provisions of chapter 34, Laws of 1891, apply to the auditing of annual statements by Superintendent of Insurance. Whether said company should make return on market value of securities as of December 31st.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 17, 1907.

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.—In your letter of the 8th inst. you request consideration of the correspondence between your office and the United States Life Insurance Company relative to auditing the annual statement for December 31st last of said company by your department.

You ask my opinion as to whether, in view of the provisions of chapter 34, Laws of 1891, the company's financial return should be treated on the basis desired by it, namely, in allowing it to carry its securities based upon an appraisal made by ascertaining the range of the market and the average of the prices as thus found running through a reasonable period of time, or whether you should require the company to make its return on the market values as of December 31st.

Chapter 34, Laws of 1891, above referred to, reads as follows:

“Section 1. Whenever by reason of the provisions of any law of this State it shall become necessary to appraise in whole or in part the estate of any deceased person, or of any insolvent estate in the hands of a receiver, or of any assignee for the benefit of creditors, or of any corporation in the hands of a receiver or otherwise, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if

any; and they shall value all such property, stocks, bonds or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time."

I find nothing in the foregoing provisions that can be construed as governing the action of the Superintendent of Insurance in the auditing of annual statements of existing insurance corporations engaged in the regular conduct of their business. The act is entitled "An act in reference to the appraisal of the estates of decedents and others."

The language of this statute is not ambiguous or of doubtful import. It relates to estates of deceased persons, to insolvent estates in the hands of a receiver or assignee and to corporations in the hands of a receiver *or otherwise*. The words "or otherwise" are not intended to be applicable to a corporation conducted as a going concern. Such words are not to be regarded as amplifying or extending the application of the statute beyond the enumeration of particulars therein set forth. It has been held that the words "or otherwise" in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense as referring to such other matters as are kindred to the classes before mentioned (*People v. Feitner*, 75 N. Y. Supp. 738). The phrase "or otherwise," when following an enumeration, should receive an *ejusdem generis* interpretation (17 Am. & Eng. Enc. Law, 1st Ed., 285-288). There are also other authorities to the same effect.

Therefore, I advise you that the provisions of the statute in question have no application to the auditing by you of the annual statements of insurance corporations filed in your department.

Your further inquiry is whether you should require the company to make its return on the market values of securities as of December 31st.

Section 44 of the Insurance Law requires that a corporation subject to the provisions thereof shall file a statement "showing its condition on the 31st day of December then next preceding,

which shall contain such matters as the Superintendent shall prescribe." It is not prescribed in said section, nor elsewhere in any statute of this State, that the Superintendent of Insurance shall appraise the securities enumerated in such annual statement at the market value prevailing on any specified day. If you were required to arbitrarily appraise values prevailing in the market on December 31st, such practice might result in an appraisal widely at variance with the fair market value. Extraordinary circumstances, such as reckless manipulation of a security, stringent monetary conditions or panics, might create a temporary market price for a security at such a low level as to be utterly inadequate to indicate its actual market value. On the other hand, uncommon situations in the market might result in establishing for a security an extravagantly high market price, one far in excess of its fair or actual market value, as for instance, a few years ago when by some peculiar process familiar to the security markets a market price of \$1,000 per share was created during a brief period of time for the shares of a security, the par value of which was only \$100. The price thus briefly maintained was subsequently recognized as being about seven times greater than the fair market value. If an insurance company were the holder of such stock and the price of \$1,000 per share temporarily prevailed on December 31st, it could not be fairly contended that the Superintendent of Insurance would be justified in appraising the value of such stock at \$1,000 per share.

In the absence of a statute prescribing some rule or system to be followed by the Insurance Department in auditing the annual statements, such work becomes a purely administrative function. Whenever any question arises as to an appraisal, it would seem to be a matter entirely within your judgment and reasonable discretion to determine the fair market value of securities, and, that it would be entirely proper for you to adopt and observe your own rules in relation thereto so long as they are fair and reasonable.

Yours respectfully,

WILLIAM S. JACKSON,

Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE.

ALBANY, July 19, 1907.

(Supplemental to preceding opinion.)

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.—In reply to your verbal inquiry to-day, I desire to supplement my opinion of the 17th instant, in the matter of auditing annual statements of life insurance companies, by calling attention to the Banking Law, section 20, respecting reports of certain corporations subject to the provisions of said law. The section cited reads in part as follows:

“Section 20. Reports.—Every corporation and individual banker subject to the provisions of this chapter shall make a written report to the superintendent of banks, in such form and containing such matters as he shall prescribe. In the case of a bank or individual banker, the superintendent shall, at least once in every three months, designate some day therein in respect to which the report shall be made. If a savings bank, trust company or safe deposit company, such report shall be made semi-annually on or before the twentieth day of January and July in each year, and shall contain a statement of its *condition on the mornings of the first days of January and July preceding*. If a savings bank, such report shall state the amount loaned upon bond and mortgage, together with a list of such bonds and mortgages, and the location of the mortgaged premises, as have not been previously reported, and also a list of such previously reported as have been paid wholly or in part or have been foreclosed, and the amount of such payments respectively; the cost, par value and estimated market value of all stock investments, designating each particular kind of stock; * * * .”

It will thus be seen that the provision which prescribed that the report “shall contain a statement of its condition on the

mornings of the first days of January and July preceding" is almost identical with the requirement of section 44 of the Insurance Law.

Notwithstanding the requirement that the report shall contain a statement of the condition upon a fixed date, it is further provided in section 20 of the Banking Law that there shall be given "the cost, par value and *estimated market value* of all stock investments."

Thus it clearly appears that, although the statute requires a statement of the condition of the corporation upon a particular date, it is not contemplated that the market price of stocks established upon that particular date shall be the values to determine the condition of the corporation on that date, but that the value of the stock investments shall be the *estimated market value*.

Attention is called to the foregoing considerations as being in confirmation of the opinion heretofore transmitted to you in the matter above referred to.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Insurance Law, Section 102 — Domestic Life Corporations.

Metropolitan Life Insurance Company, to issue only non-participating policies.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 20, 1907.

HON. OTTO KELSEY, *Superintendent of Insurance, Albany,*
N. Y.:

Dear Sir.—You have requested this office to advise you as to whether or not the Metropolitan Life Insurance Company may assume participating contracts of other companies issued prior to the present year. You state that under date of November 14, 1906, the actuary of the Metropolitan Life officially advised your

department that "after the first day of January, 1907, this company will go exclusively on a non-participating basis."

Your attention is respectfully called to the provisions of section 102 of the Insurance Law, which reads as follows:

"§ 102. Companies issuing participating policies not to do a non-participating business.—On and after the first day of January, nineteen hundred and seven, no domestic mutual life insurance corporation and no domestic stock life insurance corporation hereafter issuing or professing to issue any participating policies, shall issue any policies, except annuities, which do not by their terms give to the holders thereof full right to participate in the accumulations of said corporation as provided in this chapter. This section shall not apply to paid-up or temporary and pure endowment insurance issued or granted in exchange for lapsed or surrendered policies."

The language of the foregoing section indicates, according to my view, that it was the intention of the Legislature to restrict life insurance companies to the issuance of only one of the two kinds of policies mentioned; that is to say, a company may elect as to whether it shall issue only participating policies, or whether it shall engage exclusively in the issuance of non-participating policies. Under the provisions of the foregoing section, the Metropolitan Company has exercised its option and elected to go exclusively on a non-participating basis.

I am, therefore, of the opinion that any insurance contracts of other companies assumed by said company on or after January 1, 1907, must be exclusively non-participating, and that they are forbidden by the clearest implication of law to enter into any participating contracts, even though such contracts were issued by such other companies prior to the date mentioned.

Yours respectfully,

WILLIAM S. JACKSON,

Attorney-General.

Insurance Law—Section 100.

Equitable Life Assurance Society. Investment in bonds of the Atchison, Topeka and Santa Fe Railway Co. Exchange of serial bonds for new issue.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 22, 1907.

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.— You have submitted to this office two questions relative to the Equitable Life Assurance Society, as follows:

First: As to whether said society may subscribe for its proportionate part of a new series of bonds to be issued by the Atchison, Topeka and Santa Fe Railway Company.

Second: As to whether the society may exchange a number of serial bonds of the same company, maturing in 1908 and successive years, for bonds of a new issue.

In regard to the first question, it appears that the Equitable Life Assurance Society is the owner of ten thousand shares of preferred stock of the Atchison Company which were acquired prior to the enactment of section 100 of the present Insurance Law, and that as the owner of such shares, it has in common with the other stockholders of the Atchison Company, been accorded certain rights to subscribe at par for one hundred and twenty of the five per cent. bonds about to be issued by said company, and which are quoted on the market at a premium, so that the exercise of the subscription rights for the purchase of such bonds would be of pecuniary advantage to the Equitable Society. The solution of this question depends upon the construction of that part of section 100 of the Insurance Law, as enacted by chapter 326 of the Laws of 1906, which reads as follows:

“ No domestic life insurance corporation, whether incorporated by special act or under the general law, shall after the first day of June 1906, invest in or loan upon any shares of stock of any corporation, other than a municipal corporation, nor, excepting governmental, state or municipal authorities, shall it invest in, or loan upon, any bonds or obligations,

which shall not be secured by adequate collateral security, or where more than one-third of the total value of the collateral security therefor shall consist of shares of stock."

The language above quoted is quite clear, and embodies a prohibition against investments in bonds which are not secured by adequate collateral security. It appears from copies of the correspondence submitted, that the bonds referred to have no other security than the company's obligation to pay. It is apparent, therefore, that such bonds are not to be secured by adequate collateral security and that the purchase thereof would come within the inhibition of the section above quoted. In case the Equitable Society were permitted to exercise the rights which have been acquired by it to subscribe for and purchase the unsecured bonds, it would be necessary for it to take from its treasury a sufficient sum of money to pay the par value of such bonds, in order to acquire the same. This would constitute an investment in violation of the statute, and in my opinion should not be sanctioned by your department.

In the consideration of the second question, it appears that the Equitable Society desires to exchange bonds which are netting it about 4.60 per cent. per annum, for convertible five per cent. bonds at par. The security of the bonds will be identically the same, with an advantage accruing to the Equitable Society in making the exchange by reason of the higher income yield of the new convertible bonds. No funds of the corporation are to be used to purchase or invest in forbidden securities. If it is contemplated merely that the Equitable Society shall exchange certain bonds owned by it and maturing subsequent to December 31, 1911, for other bonds issued by the same corporation identical as to security but yielding a higher income, I can see no objection to the proposed transaction. If, however, it is intended to exchange any bonds maturing prior to December 31, 1911, for bonds maturing subsequent to said date, such last mentioned exchange would be objectionable in view of the restrictive provisions of section 100 of the Insurance Law, enacted in 1906, relative to the five year period within which certain securities may be held by insurance companies.

Yours respectfully,

WILLIAM S. JACKSON,

Attorney-General.

Insurance Law — Corporations.

Right of Insurance Company of North America and Columbia Insurance Company, to write policies against loss or damage to automobiles.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 6, 1907.

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.—You state that there is a question at issue in your department respecting the right of the Insurance Company of North America and the Columbia Insurance Company to write policies of insurance against loss or damage to automobiles resulting from collision in connection with the use of such automobiles.

Your letter on this subject informs me that the first named corporation has heretofore received authorization to transact business under articles III and IV of the Insurance Law, while the second corporation is licensed under article III only of the Insurance Law.

It appears that prior to 1907 there was no provision in the statutes of this State expressly conferring the power on any class of insurance corporations to carry on the business of automobile insurance of any kind. The Legislature gave recognition to that class of insurance for the first time by the enactment of chapter 206, Laws of 1907, by amending, respectively, sections 70, 110 and 150 of the Insurance Law. Section 110 is a part of article III, and section 150 is a part of article IV of said law. The amendment to each of said sections was precisely the same, so far as phraseology is concerned, and consisted of the insertion of the words "including insurance upon automobiles, whether stationary or being operated under their own power." Section 70, being part of article II, which relates to life, health and casualty insurance corporations, was amended by inserting a new subdivision, No. 10, to read as follows:

“Against loss or damage to automobiles resulting from collision, and against loss by legal liability, or damage to property resulting from collision of an automobile with another automobile, vehicle or object.”

It is contended by the counsel of the two companies named that sections 110 and 150, as amended, confer upon corporations authorized to do business under articles III and IV of the Insurance Law, the right to insure automobiles, not only against loss or damage by fire, but also against the hazard of collision in connection with the use of the same.

My interpretation of the amendatory provisions of chapter 206, Laws of 1907, is not in accord with the contention of the counsel of the two companies above named, and I quite agree with the position taken by your department, that it was not the intention of the Legislature to confer authority to issue policies against collision hazards in the use of automobiles, upon corporations authorized to transact business under the provisions of articles III and IV of the Insurance Law. The act mentioned, in adding a new subdivision to section 70 of the Insurance Law, expressly empowers casualty companies only to write automobile collision contracts, and thereby restricts that class of insurance to companies operating under the provisions of section 70. By the strongest implication, the statute withholds from companies operating under the other articles of the Insurance Law, the right to enter into such insurance contracts.

Yours respectfully,

WILLIAM S. JACKSON,
Attorney-General.

Insurance Law — Section 200 — Corporations.

Federal Life and Casualty Insurance Association. Certificate of authority to transact business.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 10, 1907.

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.— You have submitted to this office for my opinion certain questions relative to a proposed corporation to be known as “The Federal Life and Casualty Insurance Association,” particularly as to your power to issue, subsequent to June 1, 1906, a certificate to the effect that the proposed incorporators of said association have complied with the provisions of the Insurance Law, so as to be authorized to transact the business of a non-fraternal life and casualty insurance corporation upon the co-operative or assessment plan, under the provisions of article VI of the Insurance Law.

Your statement of facts in connection with the foregoing matter is as follows:

“May 29, 1906, this department received from John W. Heal and others of Syracuse, N. Y., a declaration in due form under section 200 of the insurance law dated May 24, 1906, and severally verified and acknowledged by parties thereto May 25 and 26, 1906, executed with the intention of forming a corporation for the transaction of life and casualty insurance upon the co-operative or assessment plan under a proposed name of ‘The Federal Life and Casualty Insurance Association.’

“This declaration of intention to incorporate was submitted to the attorney-general May 31, 1906, and was by him the same day returned to the superintendent of insurance with the approval of the attorney-general.

“May 31, 1906, the superintendent of insurance issued a certificate entitled ‘Preliminary Certificate of Authority under article VI, chapter 690, Laws of 1892, as amended,’

reciting the filing in this department of said declaration and papers with the approval of the attorney-general and certifying in substance that said 'The Federal Life and Casualty Insurance Association will be duly authorized to commence business * * * upon the co-operative or assessment plan * * * on filing a certified copy of this certificate together with a certified copy of its declaration or charter * * * and * * * when * * * the superintendent of insurance shall have further certified that it has complied with the provisions of said chapter 690 of the laws of 1892, as amended, and is authorized to transact business.'

"Such preliminary certificate has been issued by the superintendent of insurance in the practice of incorporating similar associations since the year 1892, and is pursuant to the advice of the attorney-general construing the language of such statute prescribing the declaration and in the latter portion thereof continuing — 'and the superintendent of insurance shall have further certified that it has complied with the provisions of this chapter, and is authorized to transact business,' by which it is held that two certificates are properly made in completing an incorporation.

"June 29, 1907, an examination of the affairs of this association in process of organization was made by the insurance department by which it was shown, among other things, that two hundred persons have subscribed in writing for insurance in said association in the aggregate amount of four hundred thousand dollars, and that said subscribers have each paid in two per cent. on the amount of insurance severally subscribed for, in cash, amounting to the sum of eight thousand dollars, deposited in the National Bank of Syracuse to the credit of the mortuary fund of said association. The report is accompanied by the usual affidavits, certificate of bank deposit, and schedule of subscriptions.

"July 1, 1907, said report of examination was received at the insurance department and counsel for the proposed The Federal Life and Casualty Insurance Association applied to the superintendent of insurance for a certificate that it has complied with the provisions of law and is authorized to

transact business, and for the delivery to the corporation of a certified copy of the papers to be filed and recorded and for a license in writing to the corporation to engage in the business proposed in its declaration."

The right of the Federal Life and Casualty Insurance Association to become legally incorporated and the power of the Superintendent of Insurance to issue, subsequent to June 1, 1906, a certificate of authority to transact business, depends upon a proper construction of the provisions of section 200 of the Insurance Law, which reads as follows, to wit:

"§ 200. Incorporation.

"Nine or more persons may become a corporation for the purpose of transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, fraternal or non-fraternal, by filing in the office of the superintendent of insurance a declaration signed by each of them and duly acknowledged, setting forth their intention to form a corporation for the transaction of life or casualty insurance, or both, upon the co-operative or assessment plan, the name of the proposed corporation, the place where its principal office shall be located within the state, the mode in which its corporate powers are to be exercised and of electing directors or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs and of its funds, which election shall be in such manner as shall be prescribed by its by-laws, or in case of fraternal societies, by representatives chosen by subordinate lodges, councils or bodies, who shall be members of such societies and a majority of them citizens of this State. Such declaration shall have endorsed thereon or annexed thereto and as a part thereof, the sworn statement of three of such persons that at least two hundred persons eligible under the proposed laws of the corporation to membership therein have in good faith made applications in writing for membership.

"If all the requirements of this chapter have been complied with, the superintendent shall file such declaration and

record it with the certificate of the attorney-general, in a book to be kept for that purpose, and deliver to the corporation a certified copy of the papers so filed and recorded, with his license in writing to the corporation to engage in the business proposed in the declaration, which certified copy and license shall be filed in the office of the clerk of the county where the office of the corporation is to be located. Such corporation shall not commence the business of insurance until at least two hundred persons have subscribed in writing to be insured therein in the aggregate amount of at least four hundred thousand dollars, and have each paid in two per cent. on the amount of the insurance severally subscribed for in cash, and the same is deposited in bank to the credit of the mortuary fund to be held in trust for the benefit of beneficiaries, and the superintendent of insurance shall have further certified that it has complied with the provisions of this chapter, and is authorized to transact business.

" Provided, however, that no such corporation other than a fraternal corporation shall be formed nor any such license or certificate be granted or issued by the superintendent of insurance after June first, nineteen hundred and six."

The foregoing section constitutes the first section of article VI of the Insurance Law, and was amended by chapter 326 of the Laws of 1906, whereby the last paragraph was added thereto. Said chapter 326 became a law April 27, 1906, but it was not until May 29, 1906, that your Department received a declaration of the intention of the incorporators to form a corporation under the provisions of said article VI. Thereupon, to wit, on May 31, 1906, the license was issued by your Department. But such license did not endow the association with complete corporate powers so as to enable it to make insurance contracts. Further statutory requirements must be observed before the Superintendent of Insurance could legally issue the further certificate specified in the act, to wit, the certificate of authority, empowering the corporation to commence the business of insurance. The statute provides, even after the issuance of the license, that " Such corporation *shall not commence the business of insurance* until at

least two hundred persons have subscribed in writing to be insured," etc. The corporation, at that juncture, was still incomplete and had no right to exercise corporate powers. The association of a number of persons together does not constitute them a corporation until all the laws necessary to give them corporate powers have been complied with. One of the provisions is that before the corporation can exercise the powers conferred by law upon such corporations, it must comply with certain other requirements and secure from the Superintendent of Insurance a certificate of authority. The statute does not recognize that prior to the granting of such certificate the corporation has any powers. On the contrary until the granting of the certificate the exercise of corporate powers is prohibited. In a case quite applicable to this situation the court said: "If it can exercise no corporate powers what rights or privileges has it? Corporate powers and rights go together; one cannot exist without the other. The only rights a corporation has is the ability to exercise certain powers. I cannot conceive of a corporation with no corporate powers. Powers which cannot be exercised are not powers. The ability to exercise corporate power constitutes the breath of life to a corporation; without it it cannot exist. Practically, a corporation that has no powers that it can exercise has no power at all, and is not in fact a corporation. It is not a case of suspended animation, but a case where there has been, as yet, no life. It seems to me that it is not complete as a corporation until the certificate mentioned has been granted; until that time it is an inchoate thing, and until that time it has no vested rights." (People ex rel. Depew and Southwestern R. R. Co. v. Railroad Commrs., 4 App. Div. 259.)

The proceedings for the formation of a corporation under article VI of the Insurance Law are analogous to those which were required under the Business Corporation Act of 1875, chapter 611, now repealed. Under that act, after the filing with the Secretary of State of a certificate of incorporation, that official issued a license, and thereafter, upon compliance with the further statutory requirements, the Secretary of State issued a certificate of full organization, and, under that act, if the incorporators failed to comply with the conditions required by law, within the time

therein specified, they obtained no corporate rights or franchises, notwithstanding the issuance of the license by the Secretary of State.

It seems when the Legislature enacted chapter 326, Laws of 1906, it was intended to protect the interests of any persons who might at the time of the passage of said act have already commenced proceedings to organize a corporation, because all such proposed corporations were given until June 1st to become fully organized. In this case, the persons who intended to form the corporation delayed action from April 27th, at which time the amendment became a law, until May 29, 1906, before filing a declaration of intention with the Insurance Department. Your license could have no other effect than to give the incorporators the right to comply with the further requirements of the statute within the prescribed time, to wit, on or before June 1, 1906. Having failed so to do, they had no legal status or right to be recognized as a corporation authorized to transact the business mentioned in the declaration of intention. If a certificate of authority to transact business were to be granted by your Department subsequent to June 1, 1906, it would be a violation of the statute, and would confer no corporate powers or privileges upon the applicants.

Yours respectfully,

WILLIAM S. JACKSON,
Attorney-General.

Insurance Law — Chapters 623 and 625, Laws 1907.

Stock life insurance companies. Equitable Life Assurance Company and Germania Insurance Company, election of directors.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 30, 1907.

To the Honorable, The Superintendent of Insurance:

Dear Sir.—Your favors of the 13th inst. inclosing copies of correspondence between your department and the Equitable Life

Assurance Society and The Germania Insurance Company are received.

The question asked is as to the effect of chapters 623 and 625 of the Laws of 1907, amending section 94 of the Insurance Law, and section 3 of chapter 123 of the Laws of 1906, upon the election of directors of the two companies named.

The Equitable and Germania, as I understand it, are both stock life insurance corporations and both, pursuant to statute, have conferred upon policyholders the right to vote for directors.

The elections of both corporations are therefore governed by and subject to the provisions of section 94 of the Insurance Law, which prescribes the methods to be pursued in conducting these elections.

Chapter 123 of the Laws of 1906 is entitled "An act providing for the election of directors in *mutual* life insurance corporations," and provides that such election take place December 18, 1906; for the election of officers by the directors so elected, and for the division of such directors into classes. Chapter 625 of the Laws of 1907 amends section 3 of this act and, among others, contains the following provision:

"The election of directors of every *mutual* life insurance corporation * * * which, according to its charter or by-laws, would be held prior to the month of April, 1908, shall be postponed and held on the day in that month corresponding to the day of the month when it would otherwise occur," etc.

By the express provisions of this statute and the amendatory act, it applies only to "mutual" life insurance corporations, and in my opinion does not apply to either the Equitable or Germania. These companies are stock corporations and the mere fact that they have conferred upon their policyholders the right to vote does not constitute them "mutual life insurance corporations" in the eyes of the law.

Section 94 of the Insurance Law, as enacted by chapter 326 of the Laws of 1906, regulated the election of directors, both of "mutual" and "stock" life insurance corporations, and, among other things, provided that at least five months prior to

the date of any such election, the board of directors should nominate candidates for every vacancy to be filled thereat and that one hundred or more qualified voters of such corporation could also make such nominations at least three months before such election.

By the charter of the Equitable, its election is provided to be held on December 4, 1907, and that of the Germania, by its charter, on December 11, 1907.

Early in July, 1907, and more than five months prior to the date set for said elections, both companies, by their boards of directors, made their nominations and duly filed the same with the Insurance Department. Under the statute (section 94, Insurance Law), as it then existed, the qualified voters had the right to file their nominations up to September 4th and 11th, respectively.

Thereafter, and on July 19, 1907, chapter 623, Laws of 1907, went into effect, which amended section 94 so as to require the filing of the nominations made by the boards of directors seven months prior to the election and other nominations to be filed five months before the election. The question, therefore, is whether this last mentioned statute affects the elections to be held this year of the companies named, and if so, how they are to proceed.

If this statute does apply this year, then the nominations by the boards of directors are required to have been filed in May, 1907, and other nominations in July, 1907, prior to the going into effect of the law. The result would be to prevent any legal nominations from being filed, either "administration" or "independent," and therefore probably prevent the holding of any election.

The Legislature enacted the two laws referred to (chapters 623 and 625, Laws of 1907) as companion statutes, and both took effect and became laws on the same day, July 19, 1907.

The Legislature apparently had in mind the effect of increasing the period in which nominations might be filed, for it postponed the election of "mutual" companies to April, 1908, but made no such provision for the stock companies. It could not have been and obviously was not the intention of the Legislature to prevent any election for the latter companies. These companies had commenced the process prescribed by the statute

for the holding of their elections* and in conformity with that statute as it then existed prior to the enactment of the amendatory act. There is nothing to indicate a legislative intent that this act should have a retroactive effect and consequently it has no such effect. Nor is it proper to so construe it as to result in the absurdity of preventing an election or of taking away from both the companies and the policyholders the right to make any nominations.

I am therefore of the opinion that chapter 623 of the Laws of 1907, amending section 94 of the Insurance Law, does not apply to the elections of stock life insurance corporations to be held in 1907, but that such elections may and properly should be held in accordance with the provisions of that section as enacted in 1906 and prior to its amendment in 1907.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Insurance Law — Foreign Life Corporations.

Establishment in New York city of agency of an Italian Life Insurance Company.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 19, 1907.*

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.— I am in receipt of your letter of August 27th transmitting correspondence with Messrs. Merrill & Rogers of No. 31 Nassau street, New York city, in reference to establishing an agency of an Italian life insurance company.

The proposition as stated by them is as follows:

“A life insurance company in Italy issues in Italy policies of life insurance on resident Italians, who afterwards emigrate to this country. The company does not desire to solicit insurance or write policies directly or indirectly in this

country. It does desire to establish an agency in this city where these immigrants may pay their premiums and get a valid receipt and so to notify their policy holders."

The question is whether the establishment of an agency thus described would be in violation of the Insurance Law. Attention is called to an opinion rendered by this office under date of August 7, 1907, wherein it was held that a foreign fire insurance company, not authorized to do business in this State, could not have an agency in this State to receive applications for insurance, the risks in every instance to be situated outside of the State, and the reasons therefor, cover the point raised here.

The Insurance Law provides as follows:

"Section 31. No agent of any foreign insurance corporation shall transact any business of insurance in this State until he has filed in the office of the clerk of the county where he resides a certified copy of the superintendent's authority to do business, and a certified copy of the statement required by this chapter, to be filed in the office of the superintendent, and until he has published, etc. * * *"

"Section 49. * * * The term agent in this chapter shall include an acknowledged agent or surveyor, or any other person or persons, who shall in any manner aid in transacting the insurance business of any insurance corporation not incorporated by the laws of this State, and any broker whose business, in whole or in part, is to negotiate and place risks, deliver the policies covering the same and collect premiums therefor."

"Section 50. No person or corporation shall act as agent for any foreign insurance corporation in the transaction of any business of insurance within this State or negotiate for or place risks for any such corporation, or in any way or manner aid such corporation in affecting insurances or otherwise in this State, unless such corporation shall have fully complied with the provisions of this chapter."

It is urged that it was not the intent of these provisions to cover the case stated, that they only extend to the solicitation of

insurance and the effecting of the contracts therefor, and that they do not cover an agent merely appointed for the purpose of receiving the payment of premiums. This is not my view of the intent of the statute and in my opinion is contrary to the plain reading of the sections quoted. It was the undoubted purpose of the Legislature in enacting the Insurance Law to give further protection to the public in effecting insurance of any kind. It has established a department in the State government whose duty it is to examine and pass upon the qualifications of any persons, association of persons or corporation who desire to do insurance business in this State, and to prevent any such persons or corporations from transacting any business connected with insurance, except subject to the examination and approval of the Insurance Department, and also to prevent any one acting as agent for an insurer, unless such insurer is subject to such examination and approval.

The language of section 50, which provides that no person or corporation shall in any way or manner aid a foreign corporation in effecting insurance or otherwise, is certainly sufficiently broad to cover a person appointed as agent by such corporation to collect premiums therefor, and the collection of such premiums would certainly come within the definition of aiding such corporation. To hold that an agency for the collection of premiums might be established without complying with the provisions of the Insurance Law, would render difficult the enforcement of the restrictive provisions of that statute. If a person might establish and advertise himself as an agent for a foreign insurance company and then claim that his agency was limited solely to the collection of premiums and, therefore, was not required to procure a certificate of authority from the Superintendent of Insurance, would open a door to an easy method of evading such provisions.

I am, therefore, of the opinion that the establishment of the agency in question would be contrary to the provisions of the Insurance Law.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Insurance Law.

Maryland Casualty Company of Baltimore, whether conduct of "sprinklers' leakage insurance" is lawful.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 14, 1907,*

Hon. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.—I am in receipt of your favor, enclosing copies of correspondence between your department and the Maryland Casualty Company of Baltimore.

It appears from this correspondence that the company named is a foreign insurance corporation heretofore authorized to conduct in this State the business specified in subdivisions 2, 3, 5, 6, 7 and 8 of section 70 of the Insurance Law, and that the corporation has filed with your department an agreement that the business transacted by it in this State shall be limited to boiler, accident, plate-glass, casualty, liability and burglary insurance. It also appears that in the transaction of its business it has been doing what is known as "sprinklers' leakage insurance," and the question asked is whether it may lawfully conduct the business of sprinklers' leakage insurance under the Insurance Law.

The company makes two claims:

First.—That it is authorized to conduct this branch of insurance business under subdivision 8 of section 70 of the Insurance Law, which permits insurance "against any other casualty specified in the charter which may lawfully be the subject of insurance."

Second.—That it is authorized to carry on the business of sprinklers' leakage insurance under subdivision 7 of section 70 of the Insurance Law.

As to the meaning of subdivision 8 of section 70 of the Insurance Law, it has been repeatedly held by this office that this subdivision relates to the classes of insurance specifically enumerated elsewhere in section 70, and does not permit insurance of any kind other than those specifically enumerated in the other subdivisions of that section.

See opinion of Attorney-General In re Sanitary Inspection & Insurance Company, reported in 1893, page 335; In re Security Trust Company, reported in 1894, page 65; In re Indemnifying Physicians, reported in 1904, page 436; In re Columbia Insurance Company, of August 6, 1907.

So far as the courts have passed upon this question the position of the Attorney-General's office seems to have been sustained.

People ex rel. Woodward v. Rosendale, 142 N. Y. 120.

As to the claim that subdivision 7 of section 70 of the Insurance Law is sufficiently broad to cover this class of insurance, it seems to me untenable. Subdivision 7 explicitly relates only to steam boilers and pipes and engines and machinery connected therewith or operated thereby and does not cover any other class of pipes.

I am of the opinion that the Maryland Casualty Company of Baltimore is not authorized to carry on the business of sprinklers' leakage insurance in this State, and that the ruling of your department on this subject is correct.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Insurance Law, Section 101—Domestic Life Insurance Companies.

Postal Life Insurance Company and Security Mutual Life Insurance Company. Policies other than standard forms.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, October 21, 1907.

Hon. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.—I am in receipt of your favor of the 23d ult. submitting the question of whether domestic life insurance companies have a legal right to issue outside of New York State forms of policies different from the standard forms prescribed by section 101 of the Insurance Law.

In this connection you state that you have held that "under the language of the statute only standard forms of life insurance policies can be issued by New York companies either within or without the State; this ruling is a strict construction of somewhat ambiguous language."

It appears that this ruling was based on an application on behalf of the Postal Life Insurance Company, the Security Mutual Life Insurance Company and other companies for a ruling giving them the right to issue policies differing from the standard forms in other States, and that in some other States, notably in Minnesota, the New York standard form does not comply with the statutory requirements of those localities.

In my opinion, a careful study of the provisions of section 101 of the Insurance Law, as amended by chapter 714 of the Laws of 1907, does not necessitate the strict ruling above referred to. That section, so far as material, provides as follows:

"On and after the first day of July, 1907, all policies of insurance other than industrial policies issued or delivered within this State by any domestic life insurance corporation shall be in the forms hereby prescribed and not otherwise, save as hereinafter provided."

And then, after setting forth four standard forms of policy, the section provides as follows:

"Whenever any domestic life insurance corporation shall desire to issue or deliver within this State any form of policy other than the forms herein provided it shall submit a proposed form of policy to the superintendent of insurance * * * and the superintendent may * * * approve the said form with or without modifications thereof as may seem to him expedient, and establish the same as a standard form of policy which any domestic life insurance corporation shall be entitled to use in addition to the forms hereby prescribed; * * *. Nothing herein contained shall authorize the superintendent of insurance in amending or altering the standard forms hereinbefore prescribed or in establishing any additional standard form of policy as here-

inbefore provided, to approve any alteration of or amendment to any form above prescribed, or any new form or provision or omission from any form, or by any such approval to give validity to any amendment, alteration, provision or omission which shall be in conflict with any of the provisions of the insurance law.

"Anything herein contained to the contrary notwithstanding, any domestic life insurance corporation may issue and deliver in any other State or in any foreign country or may issue in this State or deliver in any other State or any foreign country any form of policy not inconsistent with any of the provisions of the insurance law."

If it were the intention of the Legislature to forbid the issuance by a domestic life insurance company of any policy other than the standard forms set forth in this section, it need not have inserted in the statute as above quoted, the words "issue or deliver within this State" and to so construe the statute gives no effect to those qualifying words nor to the last paragraph herein above quoted. The statute gives to the Superintendent of Insurance considerable discretion to pass upon and approve variations from the standard forms of policy set forth in that section, only requiring that such variations or modifications shall in no wise conflict or be inconsistent with any provision of the Insurance Law.

I am inclined to the view that the statute should be construed as though it provided that domestic life insurance companies could only issue and deliver in this State the standard forms of policy, but that they might issue in this State and deliver in any other State a variation or modification of the standard form approved by the Superintendent of Insurance, provided, of course, that such change or modification should not be inconsistent with the provisions of the statute. A different construction might lead to preventing our domestic insurance corporations from doing business in other States of the Union, which could not have been within the legislative intent.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Insurance Law — Sections. 84-97.

Security Mutual Life Insurance Company. Protest against ruling of Superintendent of Insurance regarding expenses of insurance companies under the "Select and Ultimate Method."

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, November 21, 1907.

HON. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.—I am in receipt of your communication of the 12th ult. asking the opinion of this Department as to certain rulings made by you in interpretation of section 97 of the Insurance Law, which limits the expenses of insurance corporations doing business in this State, and transmitting to this office the correspondence in which such rulings were made. The Security Mutual Life Insurance Company has submitted a brief, questioning the correctness of the rulings so made.

The rulings in question, are as follows:

In a letter under date of August 10, 1907, to Mr. M. M. Dawson, you held:

"That the law permits only such expense allowances as can actually be realized under the select and ultimate method of valuation; in the case referred to not to exceed the net annual premium on the term policy less the tabular cost of insurance by the select and ultimate table up to the next anniversary of the policy."

A protest having been entered as to this ruling, you wrote to Mr. Fred W. Jenkins, general counsel of the Security Mutual Life Insurance Company, under date of September 30, 1907, as follows:

"It was clearly the intent of the Legislature to so limit the expenses of life insurance companies for the procurement of new business that the premiums on such business would not only carry the current risk on the policy, but

would also take care of the four items of expense set forth in the first sentence of section 97 of the Insurance Law. In order that this might be done companies were authorized to use the total loadings upon the premiums for the first year of insurance and the present values of the assumed mortality gains for the first five years, etc. It clearly was not the intent of the Legislature in authorizing the use of these loadings and present values to make a first year's expense allowance so great that the reserves for that year could not also be met by its premiums."

The contention is made that these rulings are erroneous; that a proper construction of the section in question would permit the insurance companies to use for the items of expense enumerated the full amount gained according to the select and ultimate formula, regardless of reserve requirements, and even though this computation apparently permitted the use of the whole of the first year's premiums as in fact would be the result as to contracts for short term insurance.

So much of section 97 of the Insurance Law as it is necessary to quote, as bearing upon this subject, is as follows:

"No domestic life insurance corporation shall in any calendar year after the year 1906 expend * * * (1) for commissions on first year's premiums, (2) for compensation not paid by commissions, for services in obtaining new insurance, exclusive of salaries paid in good faith for agency supervision * * * (3) for medical examinations and inspections, * * * and (4) for advances to agents, an amount exceeding in the aggregate the total loadings upon the premiums for the first year of insurance received in said calendar year (calculated on the basis of the American experience table of mortality with interest at the rate of three and one-half per centum per annum) and the present values of the assumed mortality gains for the first five years of insurance on the policies on which the first premium, or installment thereof, has been received during said calendar year, as ascertained by the select and ultimate method of valuation as provided in section eighty-four of this chapter. * * *"

This section, therefore, permits the use for the four purposes therein enumerated of the loadings on the first year's premiums and the present value of the assumed mortality gains, as ascertained by "the select and ultimate method of valuation as provided in section 84." Referring to the last-named section we find the following provision:

"The Superintendent of Insurance shall annually make valuations of all outstanding policies * * * and all other obligations of every life insurance corporation doing business in this state. All valuations made by him or by his authority shall be made upon the net premium basis. * * * The legal minimum valuation of all contracts issued on or after the first day of January, nineteen hundred and seven, shall be in accordance with the select and ultimate method, and on the basis that the rate of mortality during the first five years after the issuance of said contracts respectively shall be calculated according to the following percentages of the rates shown by the American experience table of mortality, to-wit, first insurance year fifty per centum thereof, second insurance year sixty-five per centum thereof, third insurance year seventy-five per centum thereof, fourth insurance year eighty-five per centum thereof, and fifth insurance year ninety-five per centum thereof. * * *"

Neither section describes the "select and ultimate method" nor defines what that method is. It is assumed by the law that it is one definitely established, but it is necessary to go outside of the law to find it defined. What appears to be an authoritative definition of this method is contained in a paper entitled "Relationship of Initial Expenses and Selection to Valuation," read by Mr. Henry Moir, P. F. A., F. I. A., before the Fourth International Congress of Actuaries in September, 1903, and published in the proceedings thereof. From this paper the following quotation may be made:

"The formula for valuation to which attention is directed is as follows: (Formula given.) It was given the name 'Select and Ultimate' by its author Mr. M. M. Dawson.

* * * One of the most obvious limitations of the new formula is that even after the first premium has been paid, the policy might carry a negative value. Such negative values are not good assets, because the policies might be discontinued at any time. In the practical application of this method of valuation it would therefore be necessary that steps be taken to eliminate negative values. The theory on which the formula is based solves the question as to what the minimum net value of any policy should be; it should equal the mortality risk at select rates from the date of valuation until the next premium falls due * * *."

Thus the error into which the objectors seem to have fallen is to interpret the phrase "select and ultimate method" as relating solely to the select and ultimate formula or table and as not including the restrictions and limitations above quoted.

Applying this definition to the sections of the Insurance Law above quoted it appears that the select and ultimate method involves the proposition that the minimum net valuation shall equal the mortality risk at select rates from the date of valuation to the date when the next premium falls due, and hence that in no event can the expense allowance encroach upon or impair that minimum value. This construction gives effect to the opening paragraph of section 84, viz.: "The Superintendent of Insurance shall annually make valuations of all outstanding policies and all other obligations, etc," the provisions of which would be ignored if the construction sought by the objector were sustained. This construction likewise brings the section into harmony with the other provisions of recent insurance legislation. The statute taken as a whole requires the maintenance by all insurance companies doing business in this State of an adequate reserve and permits the dissolution of all such corporations whose reserves permanently fall below the required standard. The courts have held (*Boswell v. Security Mutual Life Insurance Co.*, 119 App. Div. 723), that the limitations of section 97 apply to each policy and each agent and the same rule would seem also to require a proper reserve as to each policy. It obviously was the legislative intent to strictly limit the expenditures of insurance companies securing

new business and it would do violence to that intent to hold that the whole of the first year's premium could be used for such expenses, leaving nothing for the required reserves. Certainly this will be the result if the contentions of the objectors to your rulings were upheld.

I am of the opinion that the plain reading of sections 97 and 84 of the Insurance Law, having in mind the context of those statutes and the definition of the select and ultimate method above quoted, establishes the correctness of your rulings.

I return herewith the papers submitted.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Insurance Law — Section 36.

Whether directors or officers of insurance companies in New York State shall receive money for procuring loans, etc.

STATE OF NEW YORK.

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 5, 1907.*

Hon. OTTO KELSEY, *Superintendent of Insurance, Albany, N. Y.:*

Dear Sir.— I am in receipt of your favors of the 7th and 23d ults., asking the opinion of this office as to the proper construction of section 36 of the Insurance Law, and also asking certain specific questions in reference thereto.

This section in its present form was enacted by chapter 326 of the Laws of 1906, and prior to its amendment by that statute read as follows:

“ No director or officer of an insurance corporation doing business in this State shall receive any money or valuable thing for negotiating, procuring or recommending any loan from any such corporation, or for selling or aiding in the sale of any stocks or securities to or by such corporation.”

By the amending act above referred to the phraseology was slightly changed, a violation thereof was made a misdemeanor and the following clause added:

“nor be pecuniarily interested either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan.”

The clause so added is but the expression of the rule at common law which holds directors of corporations to be trustees and is stated by the Court of Appeals in the case of *Bass v. N. Y. L. E. & W. R. R.*, 125 N. Y. 275, as follows:

“ * * * the rule which forbids those who fill judiciary positions from making use of them to benefit their personal interests — extends to all transactions where the individual’s personal interest may be brought in conflict with his acts in a judiciary capacity and it works independently of whether there was fraud or whether there was a good intention. Where the possibility of such conflict exists there is danger intended to be guarded against by the absoluteness of the rule.

Therefore to paraphrase the section as it now stands, it provides that:

“No director or officer of any insurance corporation * * * shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase by or sale to such corporation of any property. No director or officer of any insurance corporation shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any loan from such corporation.

“No director or officer of any insurance corporation shall be pecuniarily interested either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan.”

The purpose of the amendment to this section, as well as of recent legislation affecting the business of insurance, was to remedy certain evils which developed in the management of insurance corporations and which had been investigated by the joint legislative committee which recommended this legislation. It may,

therefore, be assumed that the legislature and its committee had clearly in mind the acts which they deemed it desirable to prohibit and exactly how far they considered it expedient to go. How far they have gone is to be learned from a plain reading of the statute rather than from any argument as to the propriety of preventing certain practices. It may be that it would be desirable to prohibit any business relations between an insurance corporation and any other corporation in which an officer or director of the insurance corporation was interested as stockholder, director or otherwise; but this the legislature has not done. It might readily have done so by the insertion in the section in question of a few words of plain prohibition of such relations. Instead of so doing it has expressly limited the prohibition of being "pecuniarily interested," by the words as "principal, co-principal, agent or beneficiary." By the mere fact of being a stockholder or director in the selling or borrowing corporation, one may be "pecuniarily interested" but he is not by that fact alone "interested" as "principal, co-principal, agent or beneficiary" in the ordinary acceptation of the words used.

The section prohibits an officer or director of any insurance corporation from making any direct profit out of any transaction of that company. He must not sell to the company any stock, securities or other property either for himself or as agent of another or in which he has any interest. He cannot receive any commission or other "valuable thing" on any sale to or purchase by such corporation nor on any loan made by it.

On the other hand the section does not prohibit an insurance corporation from investing in the securities of or making a loan to another corporation even though an officer or director of the former be also an officer, director or stockholder of the latter, provided such person has no direct interest in the transaction by reason of ownership or of other interest in the particular securities or property purchased or otherwise.

Having in mind these views I am of the opinion that the questions asked should be answered as follows:

First. Can a life insurance corporation, through its directors or officers, make a loan to any corporation in which its (the life insurance corporation) directors or officers are stockholders?

Yes, provided that their only interest in the loan is as stockholders of the borrower.

Second. Where a director or officer of a life insurance corporation is also actively connected with the management of another corporation, does the statute prohibit the life insurance corporation from loaning money to or purchasing securities from such corporation?

Third. If a life insurance corporation under section 36 of the Insurance Law is not permitted to loan to or buy securities from a corporation in which its officers are stockholders or actively participating in its management, can such life insurance corporation make loans to such other corporation or buy its securities through the agency or brokers?

In considering these questions it is necessary to bear in mind not only the statute, but the common law rule which is stated by the courts as follows:

“When a trustee or the officer or director of a corporation deals with himself as an individual or in the character of trustee, director or officer of another corporation with respect to the funds, securities or property of the corporation, the transaction is at least open to question by the corporation, or in a proper case by its stockholders and the trustee is bound to explain the transaction and show that the same is fair and that no undue advantage was taken by him of his position for his own advantage or the advantage of some other corporation in which he has an interest.”

Sage v. Cuyler, 147 N. Y. 247.

“It is undoubtedly a well settled rule that executory contracts entered into by corporations having common directors are voidable at the instance of either corporation and the court will not inquire into the question whether or not it is beneficial to the corporation seeking to avoid it. This right is vested in the corporation and not in the individual stockholder.”

Burden v. Burden, 159 N. Y. 307.

It would therefore appear that the transactions mentioned in the questions are not prohibited by the statute, provided the “di-

rector or officer" of the insurance corporation has no personal interest therein and that the transaction was fair and no advantage was taken of his position to secure his own advantage or that of the other corporation.

Fourth. Where a life insurance corporation, through its finance committee, purchased bonds of a railroad corporation, not from the railroad corporation itself but from a third person, and two members of such finance committee were respectively president and secretary of such railroad corporation, is this transaction prohibited by this section?

No; provided the two persons named had no interest in the specific securities purchased.

Fifth. Can a brokerage firm, of which a director of an insurance corporation is a member, act as broker for the insurance corporation in the purchase or sale of securities and receive commissions therefor?

No.

Of course, the foregoing is subject to the qualification that if the transaction be merely colorable and that in fact an officer or director of the insurance corporation was the actual and direct beneficiary thereof, the transaction would be subject to the statutory prohibition.

I fully appreciate that an adherence to this ruling may leave the door open to many abuses and that a more comprehensive prohibition of officers or directors of corporations acting in a dual capacity is eminently desirable.

On the other hand the Legislature may have considered that the restrictions upon legitimate business and the resulting difficulty in securing men prominent in the business world to accept directorships in insurance corporations would more than counterbalance the benefit to be derived from a more sweeping prohibition of such business relations. These, however, are considerations to be submitted to the Legislature.

It seems to me that the plain reading of the statute, as it stands, leads to the conclusions above stated.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

OPINIONS RENDERED THE STATE SUPERINTENDENT OF PRISONS.

Penal Code—Sections 694–697.

Prisoners. Commutation of sentence. Action of Superintendent of Prisons regarding custody of Thomas McKeon.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 23, 1907.

HON. C. V. COLLINS, *Superintendent of Prisons, Albany, N. Y.:*

Dear Sir.—Replying to your favor of the 25th ult., asking whether or not it would be proper for you to receive into your custody Thomas McKeon on whom were imposed two sentences of imprisonment for seven years and six months each, sentence being pronounced on the 8th day of July 1907, the last of which sentences expires during prohibited time, would say that section 694 of the Penal Code of the State of New York reads as follows:

“Where a person is convicted of two or more offenses, before sentence has been pronounced upon him for either offense the imprisonment to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first or other prior term or terms of imprisonment to which he is sentenced.”

Section 697 of the Penal Code reads as follows:

“When a convict is to be sentenced to imprisonment in a State prison or penitentiary, the court before which the conviction was had must limit the term of the sentence, having reference to the probability of the convict earning a reduction of his term for good behavior, as provided by chapter 21 of the Laws of 1886, and assuming that such reduction will be earned, so that the sentence will expire during either of

the following months: April, May, June, July, August, September and October * * *."

Then follow certain exceptions which are not applicable here.

"The officers of every prison or penitentiary are hereby expressly prohibited from taking into their custody any convict sentenced in violation of the provisions of this section and any convict so illegally sentenced shall be returned by the sheriff of the county where the conviction was held, to the court to be resented in conformity to the provisions of this section, but if it shall appear to the officers of any prison or penitentiary at the time it is sought to incarcerate the convict therein that the court which imposed sentence has adjourned, then it shall be lawful for said officers to receive said convict and hold him in custody until he can be resented as herein provided and the second or resentence shall be deemed to have begun on the date of the convict's reception under his first sentence. The officers of any prison or penitentiary shall, in the case of a convict so illegally sentenced to imprisonment therein, immediately notify the court of their action."

Section 2 of chapter 21 of the Laws of 1886 provides:

"Where any convict in any State prison or penitentiary in this State is held under more than one conviction, the several terms of imprisonment imposed thereunder shall be construed as one continuing term for the purpose of estimating the amount of commutation which he or she may be entitled to under the provisions of this act."

From the foregoing provisions it is clear that the two sentences imposed upon the prisoner should be considered as one for the purpose of ascertaining the commutation to which the prisoner is entitled, and when so considered it is found that the last sentence will expire in the month of December 1916. This is contrary to section 697 of the code above quoted. It is therefore the duty of the sheriff of the county where the conviction was had to return the prisoner to the court to be resented in conformity with the provisions of section 697 of the Penal Code and the other provi-

sions above cited. If, however, the court which pronounced the sentence has adjourned you may receive such convict and hold him until he can be properly resented, notifying the court of your action.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

State Prisons — Reformatories and Penitentiaries.

Whether Superintendents are "peace officers" under chapter 626,
Laws 1907.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, October 8, 1907.

Hon. C. V. COLLINS, *Superintendent of Prisons, Albany, N. Y.:*

Dear Sir.—Replying to your favor of the 4th ult., inquiring whether or not the Superintendent of State Prisons and superintendents of reformatories and penitentiaries are within the meaning of chapter 626 of the Laws of 1907, "peace officers," would say that chapter 626 of the Laws of 1907, amends the Penal Code by adding a section thereto, to be known as 379-a.

The amendment reads as follows:

"Section 379-a. Upon the determination of a criminal action or proceeding against a person, in favor of such person, every photograph of such person and photographic plate or proof taken or made of such person while such action or proceeding is pending by direction or authority of any police officer, peace officer or any member of any police department, and all duplicates and copies thereof shall be returned on demand to such person by the police officer, peace officer or member of any police department having any such photograph, photographic plate or proof, copy or duplicate in his possession or under his control; and such police officer, peace

officer or member of any police department failing to comply with the requirements hereof, shall be guilty of a misdemeanor."

By section 154 of the Code of Criminal Procedure of the State of New York "peace officers" are defined as follows:

"Section 154. A peace officer is a sheriff of a county or his under-sheriff or deputy, or a constable, marshall, police constable or policeman of a city, town or village."

By section 960 of the Code of Criminal Procedure it is provided as follows:

"Unless when otherwise provided, the term 'peace officer' signifies any one of the officers mentioned in section 154."

The amendment to the Penal Code, 379-a, above quoted must be construed with reference to the sections of the Code of Criminal Procedure, also cited above.

I am of the opinion, therefore, that neither the superintendents of reformatories, penitentiaries or State prisons, nor the agents or wardens of the several State prisons are peace officers, within the meaning of chapter 626 of the Laws of 1907. Having reached this determination, it will be unnecessary to answer the third and fourth questions asked in your letter.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE SUPERINTEND-
ENT OF PUBLIC WORKS.

Superintendent of Public Works — Contracts.

In re contract Madden Lumber Co. Right of Superintendent to purchase in open market lumber not delivered within time specified.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *February 6, 1907.*

HON. WINSLOW M. MEAD, *Deputy Superintendent of Public Works, Albany, N. Y.:*

Dear Sir.—Your request of the 1st inst. for an opinion as to the right of the Superintendent of Public Works to purchase in open market lumber which has not been delivered within the time provided by the contract, by the Madden Lumber Company, is received.

The contract entered into June 14, 1906, makes the specifications referred to therein a part thereof, and by these specifications it was provided that delivery was to be made on or before December 1, 1906. The contract contained the further express provisions that the work shall be completed on or before the 1st day of December, 1906, except in cases where the said delivery is delayed by strikes or by unforeseen accidents, resulting from fires, floods or insurrections. It is inferred from your letter that the failure of delivery was not based upon any of the contingencies named.

The contract further provides that the party of the second part will pay all damages resulting to the State because of the neglect, delay or default of the party of the second part, in completing delivery of the said timber and plank within the time indicated in this contract. The time of the delivery was an essential element of the contract.

You state that a considerable amount of the materials covered by the contract is still undelivered, and that the season is so far

advanced that the Superintendent feels it necessary to go to the open market for the lumber and timber which is needed for immediate use on the canals, in order to insure the opening of the canals on or about May 1st, the usual opening day, and that, before proceeding to purchase this material in open market, the Superintendent of Public Works would like to be advised as to whether, under the terms of the contract, he is legally warranted in purchasing this material in the open market, and in charging the difference between the contract price and the price he will be compelled to pay, to the contractor.

Upon the facts stated, I advise you that you have the right to go into the open market and purchase the materials which have not been delivered within the time prescribed by the contract, and that for any increase at the market price which the State is compelled to pay, over and above the contract price for such materials, the contractor will be liable under the terms of his contract.

The contract is enclosed herewith.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Superintendent of Public Works — Contracts.

Power of attorney from Atlantic, Gulf & Pacific Company, to
National Commercial Bank of Albany.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *April 2, 1907.*

Hon. FREDERICK C. STEVENS, *Superintendent of Public Works,*
Albany, N. Y.:

Dear Sir.— In reference to the power of attorney from the Atlantic, Gulf & Pacific Company to the National Commercial Bank of Albany, submitted by you to me for consideration, you are advised as follows:

The power of attorney recites that the Atlantic, Gulf & Pacific Company covenants and agrees to and with the said National

Commercial Bank of Albany and the State of New York for the good and valuable consideration actually transferred at the time of the execution thereof, that the power shall be irrevocable and binding upon the Atlantic, Gulf & Pacific Company until any existing indebtedness, or any indebtedness that may hereafter be created against said company and in favor of said bank shall be fully paid. I do not understand that any consideration whatever has, in fact, passed to the State or is intended to accrue to the State on account of this power of attorney, the recital therein to the contrary notwithstanding.

The Atlantic, Gulf & Pacific Company by its contract with the State agreed in paragraph 6, as follows:

“The contractor further agrees that he will not assign, transfer, convey * * * or otherwise dispose of * * * without the consent in writing of the Superintendent of Public Works * * * any moneys which are to become due or payable to him because thereof to any person, company or corporation.”

The effect of this power of attorney is to work a disposition by the contractor of moneys which are to become due or payable to him because of the contract. You have the right under the contract to approve this power of attorney as drawn, and recognize it. In any such case the surety of the contractor should first enter into an agreement with the State that your consent to such a power of attorney as this and recognition of it should in no way impair the obligation of the surety under his bond.

The contractor without your consent, has the right to designate by a simple power of attorney, an attorney in fact, to receive payments under the contract.

I suggest further that before this power of attorney should be approved, the recital, that the State has received any consideration for it, should be stricken out.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Canal Law.

Term canal. Its meaning under article VII, section 8, State Constitution. Leasing of lands within "blue line," etc.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 29, 1907.

HON. FREDERICK C. STEVENS, *Superintendent of Public Works,*
Albany, N. Y.:

Dear Sir—Replying to your request for an opinion upon the following:

"First. Does the term 'canal' as used in article VII, section 8 of the State Constitution, cover all land within what is known as the 'blue line,' and all structures, as well as the water channel; or,

"Second. Does it apply to the so-called prism and towing-path and berme banks of the canals with the locks, feeders, etc., which constitute the channel and whose maintenance and integrity are necessary to a continued highway for water craft; or,

"Third. Is there anything in the Constitution or statutes placing an inhibition on the leasing under proper terms and conditions favorable to the State's interests and not detrimental in any respect to the canal as a system for water transportation, of lands lying within the blue line and taken for canal purposes, which in actual practice it has been found are not essential to the operation of the canals and whose occupancy for other purposes and by other persons than the State does not and would not in any degree interfere with the free and full operation of the canal system as a highway for traffic."

The term "canal," as used in the Constitution, has been thus defined:

"Manifestly, that the canals, as highways of commerce, connecting the lakes with the Atlantic ocean, should forever remain the property of the State, and under its management;

* * *. The canal waterways, for the navigation of boats, were not to be sold, leased, or otherwise disposed of, under any act of the Legislature; nor could the Legislature authorize the sale of any other property or thing owned by the State connected with the canals, and actually essential to their operation and maintenance."

Sweet v. City of Syracuse, et al., 129 N. Y. 316, 341.

The Canal Law, article VI, makes provision for the lease of surplus canal waters, and chapter 595 of the Laws of 1897, makes similar provision and authorizes the construction of necessary works by the State to render such waters available.

Section 11 of the Canal Law authorizes permits for the erection by lessees of surplus waters, of warehouses, mills and other buildings for commercial or manufacturing purposes upon any dam, pier, mole or other work erected by the Canal Board or the Superintendent of Public Works in any canal.

Section 25 of the Canal Law, as amended by chapter 340 of the Laws of 1902, authorizes permits for the occupation of canal lands and for the crossing of canals by railroads.

No statute authorizes any other leases for definite terms or for exclusive occupation of lands within the blue line of the canal to private persons or corporations.

The opinion of the Attorney-General to your Department of March 28, 1900, held that a contract with a telephone company to set its poles upon canal lands was unauthorized.

In my opinion authority for leases for use or occupation of canal lands is confined to cases where expressly authorized by the Legislature under the constitutional limitations stated.

The statute has provided for the disposition of lands unnecessarily appropriated and abandoned for canal purposes by sale thereof. (Public Lands Law, section 50.) This indicates that canal lands actually unnecessary for canal purposes should be sold by the State and should not be leased to private persons. I believe the practice of canal management has been in accord with this construction.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Barge Canal Law.

Lease of surplus waters at Lockport. Notice in order to cancel.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, November 27, 1907.

Hon. FREDERICK C. STEVENS, *Superintendent of Public Works,*
Albany, N. Y.:

Dear Sir.—I am in receipt of your favor of November 19, 1907 in which you refer to my opinion dated August 30, 1907, addressed to Hon. Frederick Skene, State Engineer and Surveyor, relating to the lease of surplus waters at Lockport, to Kennedy and Hatch, and in which you inquire what in my opinion would constitute a reasonable notice of the intention of the State to cancel said lease.

There is no time specified in the lease itself, and I think that a notice of thirty days would be ample and reasonable. It has been the practice of the Lockport Hydraulic Association to pay the rental reserved by the lease to the State Comptroller some time about the first of January each year, and I think it would be advisable for the Canal Board, or yourself, to notify the Comptroller not to accept any further payments from that company, if you have in view the intention to cancel the lease.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED THE STATE WATER SUPPLY COMMISSION.

State Water Supply Commission.

Power of, to issue bonds for improvement of Canaseraga Creek.
Authority of State Comptroller to countersign and sell.

STATE OF NEW YORK,**ATTORNEY-GENERAL'S OFFICE,****ALBANY, July 12, 1907.**

HON. JOHN C. GRAVES, *Secretary State Water Supply Commission, Albany, N. Y.:*

Dear Sir.— I am in receipt of your recent favor requesting an opinion as to whether or not the State Water Supply Commission now has authority, under chapter 734 of the Laws of 1904, as amended by chapter 354 of the Laws of 1907, to issue bonds for the improvement of Canaseraga Creek, according to the plans and specifications made and filed by the Commission in Livingston county, and whether or not the Comptroller has authority to sign and sell the same, the final order for such improvement made by the Commission, having been approved by chapter 195 of the Laws of 1907.

I have examined the provisions of law governing the matter and am of the opinion that chapter 734 of the Laws of 1904, as amended, is constitutional, and that under its provisions the Commission now has authority to issue bonds, on approval as to amount by the Comptroller, not to exceed the cost of the improvement on which the bonds are issued and the Comptroller has authority to countersign and to sell the same at not less than par and accrued interest, provided that the preliminary requirements of the statute have been complied with.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

OPINIONS RENDERED OTHER THAN STATE
DEPARTMENTS.

Villages — Taxes.

Property taken by State for Barge Canal, whether late owner is
liable for taxes.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *February 25, 1907.*

HERBERT J. FANNING, Esq., *City Attorney, Fulton, N. Y.:*

Dear Sir.—The Common Council of the city of Fulton, has asked the opinion of this department upon facts stated by you, as follows:

There appears on the tax rolls of your city a certain piece of property which has been taken by the State for the purposes of the canal improvement under chapter 147 of the Laws of 1903.

The property was taken by the State before the tax in your village was levied for the present year.

The question is whether or not the corporation, which was the late owner of the property, will be liable for village taxes levied this year upon the property since it was taken for canal purposes.

You say that you have advised your village authorities that the corporation named is not liable for any tax levied upon the property after the same was taken by the State. This department concurs in the advice which you have given.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Tax Law — Special Franchise Corporations.

Authorities of the City of New York may enforce payment of taxes by defaulting corporations in the sale at public auction of franchises and tangible property.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *February 28, 1907.*

HON. WILLIAM B. ELLISON, *Corporation Counsel, New York City:*

Dear Sir.—I deem it my duty to advise you that there is no reason that I have been able to discover why the authorities of the city of New York should not proceed at once to enforce the payment of special franchise taxes due from corporations in the same manner in which the payment of land taxes is enforced. The right of the municipal authorities to sell at public auction the franchises of defaulting corporations is clear, and if there is any efficacy in this procedure, it should be employed to compel these interests to bear their share of governmental expense.

The records in this office show that a number of corporations have never paid taxes under the assessment of their special franchises since the enactment of the law imposing the tax in 1899 (chapter 712, Laws 1899). Many other corporations subject to the tax are in arrears five years or more.

In all these cases, proceedings are pending to review the assessments under article II of the Tax Law (chapter 908, Laws 1896.) Article XI allows any person aggrieved by an assessment of property to procure a review thereof by the Supreme Court, under a writ of certiorari. The writ of certiorari does not act as a stay of proceedings to enforce the tax. Even in the few instances in which the Court has included a stay in the order allowing the writ the right of the local authorities to enforce payment of the tax remains unimpaired.

In my judgment, reached after a careful reading of the statute, it was not the intention of the Legislature, in providing a remedy by way of certiorari, to review assessments for taxation, to delay

in the least the collection of the taxes. On the contrary, article XI plainly contemplates payment of the taxes and the refunding of any amount illegally or erroneously exacted.

Section 251 of the statute expressly says that the allowance of the writ shall not stay the proceedings of the assessors or of other officers to whom the assessment is delivered, to be acted upon according to law. Sections 252-255 regulate the procedure under the writ. Then follows section 256, which says that if, in the final order, it shall be adjudged that the assessment was illegal, erroneous or unequal, and the order was not made in time for the proper officers to correct the roll, the excess paid over the amount fixed by the Court shall be repaid to the petitioner, with interest.

There is absolutely nothing in the Tax Law which interrupted the usual and orderly collection of special franchise taxes. It simply provides a remedy by which taxes paid in an illegal or erroneous assessment may be recovered. It was held in *People v. Coleman*, 48 Hun, 602 (a case well known to you) that a writ of certiorari under the sections of the Tax Law, mentioned does not stay the collection of the tax, and that any order of the court allowing the writ which purports to stay the collection of the tax, is without authority. This ruling is in accord with the long established policy of the courts.

I can see no reason, therefore, why the local authorities in any tax district should not proceed to enforce the payment of special franchise taxes in the manner provided for the collection of land taxes, notwithstanding the pendency of proceedings under writ of certiorari to review the assessment.

An examination of the papers in proceedings pending to review special franchise assessments, especially in the city of New York, shows that, in a large number of cases, the petitioner is a non-operating street railway company; that is to say, a company which has leased its lines or has consolidated with another company. In all such cases a sale of the company's franchise could be easily accomplished and bidders would be numerous, for the reason that the property sold would be rented property, and the purchaser would be only to the trouble of collecting the rent. In other cases the petitioners are actually engaged in operating under their franchises and the purchasers would be compelled to continue operations. Nevertheless, sales in all such cases are entirely feasible.

I therefore submit to you that the proper authorities of your city should offer for sale in the usual way the franchises and tangible property connected therewith of all corporations who have made default in paying their special franchise taxes. No better or quicker method can be devised of bringing to a head the pending litigation.

Yours truly,
WILLIAM S. JACKSON,
Attorney-General.

General Village Law.

Village of Clyde. Term of office of police justice elected "to fill vacancy."

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, March 7, 1907.

CHARLES H. FORD, Esq., *Clyde, N. Y.:*

Dear Sir.—Your communication asking for the opinion of the Attorney-General as to the term of the present incumbent of the office of police justice of the village of Clyde and as to whether a police justice should be elected at the ensuing election in that village, is received.

The facts, as I understand them are as follows:

The village of Clyde is incorporated under the general village law, being chapter 414 of the Laws of 1897 and the acts amendatory thereof.

At the regular annual election in said village on March 17, 1903, one Charles W. Field was elected police justice and took office pursuant to such election on January 1, 1904.

Field died on November 10, 1904 and on November 17th of that year the board of trustees filled the vacancy thus created by the appointment of John C. Gillette as police justice.

At the regular annual election held in said village on March 21, 1905, the said Gillette was elected police justice and on the ballots by which he was elected after the name of the office of police justice was printed the words "to fill vacancy."

The village of Clyde is to hold its regular annual election on March 19, 1907, and the question now asked is whether a police justice is to be elected at this election or whether Gillette, by reason of his election on March 21, 1905, is entitled to hold the office for a full term from January 1, 1906.

The provisions of the village law, so far as they apply, are as follows:

"Section 43. * * * the * * * police justice * * * shall be elective officers * * *. An official year begins at noon on the first Monday after the third Tuesday in March and ends at noon on the same Monday in the next calendar year. The term of office of * * * a police justice (shall be) four calendar years. A full term of the police justice begins on the first day of January succeeding the annual election at which he was elected."

"Section 53. Elective offices shall be filled at the annual election next preceding the expiration of the terms thereof. If a vacancy occurs in an elective office more than ten days prior to an annual election at which a successor for a full term is not to be chosen, it shall be filled at such election for the remainder of the unexpired term."

"Section 55. An annual election shall be held in each village on the third Tuesday in March * * *."

"Section 64. Vacancies occurring otherwise than by expiration of term in a village office, shall be filled by the board of trustees, if the office be elective, until the end of the current official year."

Applying these provisions to the facts above stated, it would appear:

That Field, by his election on March 17, 1903, was entitled to hold the office of police justice from January 1, 1904, to January 1, 1908.

That on the death of Field on November 10, 1904, the board of trustees, under section 64, had the power to fill the vacancy for the "remainder of the official year" or until the first Monday after the third Tuesday in March, 1905, and that the appointment of Gillette on November 17, 1904, was effective until March 27, 1905.

That the election of Gillette on March 21, 1905, was for "the remainder of the unexpired term" of Field under the provisions of section 53 and therefore, Gillette's term expires on January 1, 1908.

Inasmuch as section 53 also provides that elective offices shall be filled at the annual election next preceding the expiration of the terms thereof, it follows that a police justice should be elected on March 19, 1907, to take office January 1, 1908, and to hold the same for four years thereafter.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

General Village Law.

Village of Red Creek, raising moneys without submission of proposition. Use of money in general fund for fire purposes. Eligibility to hold office of village trustee.

Election Law.

Ballots, marking of, under sections 105, 110 and 81.

STATE OF NEW YORK.

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 8, 1907.*

W. G. PHIPPIN, Esq., *Red Creek, N. Y.:*

Dear Sir.—Your various letters inquiring as to certain provisions of the General Village Law, in so far as they affect the village of Red Creek, are received. The village of Red Creek, according to your statement, is incorporated under chapter 414 of the Laws of 1897 and the acts amendatory thereof, being the General Village Law.

The first question that you ask is "Can money be raised for any purpose without submission of a proposition therefor at an election?"

Section 110 of the said act provides in substance "that the board of trustees shall levy the tax for the current fiscal year," which shall include (subdivision 4) "such additional sums as shall be deemed necessary to meet all the other expenses of the village not exceeding one-half of one per cent, of the total valuation of the property assessed therein." It would seem therefore that within the limits prescribed, the answer to your question would be in the affirmative.

Your second question is, "Can money on hand in the general fund be used for the purchase of fire apparatus?"

Section 200, subdivision 2, provides that the board of fire commissioners in any village, may purchase fire engines, hose, hose carts, tools, implements and apparatus. Section 88, at subdivision 19, provides "that the village board has all the power of a separate board of fire commissioners if the village has no such separate board, and in that case a provision applying to such board of fire commissioners applies to the board of trustees." It would seem, under the provisions of these two sections, that your board of trustees has authority to purchase fire apparatus.

Your third question is, "Can a person who is assessed only for personal property hold the office of president or trustee of such village?"

Section 42 provides "that a president or trustee must, at the time of his election, be the owner of property assessed to him on the last preceeding assessment roll and must also be the owner during the term of his office, of property assessed to him on the assessment roll of said village." This section appears to make no distinction between personal property and real estate and it would, therefore, appear that a person assessed for personal property only is eligible to hold said office.

Your last question is, "Whether in writing a name in the blank column on a ballot must a cross mark also be used before that name?"

Under the provisions of rules 3 and 4 of section 105 of the Election Law, rule 3 of section 110 of that law and section 81 of that law, a cross mark should not be used.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Public Service Commissions.

Senate Bill No. 682, Assembly Bill No. 1270. Memorandum of Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 23, 1907.*

HON. HENRY R. GLYNN, *Assembly Chamber, Albany, N. Y.:*

Dear Sir.—In compliance with your recent request for my opinion concerning the bill introduced on March 6, 1907, by Mr. Page, in the Senate (Senate bill No. 682), and by Mr. Merritt in the Assembly (Assembly bill No. 1270), entitled "An act to establish the Public Service Commissions and prescribing their powers and duties and to provide for the regulation and control of certain public service corporations and making an appropriation therefor," I have given the subject all the earnest consideration which the short space of time allowed, as was demanded by the supreme importance of the questions involved.

There has been in recent years a constantly increasing demand on the part of the people for the enactment of laws for the proper regulation and control of public service corporations. This demand has arisen from the very general knowledge that these corporations have been guilty of making extortionate charges, of discriminations, of granting rebates, of charging excessive rates, and conducting their business in a manner oppressive of the rights of the people, by which means these corporations have been enabled to crush out competition and have become so rich and powerful as to be a menace to popular government.

So great has been this demand for the regulation and control of such corporations, that as early as 1887, the United States Congress passed what is known as the "Interstate Commerce Act," which conferred upon the Interstate Commerce Commission quite general supervision of railways doing an interstate commerce business. In the last Congress this act, after a most prolonged discussion, was amended and greater powers conferred upon that commission.

In many of the States, State control of public service corporations has been delegated by legislative enactment to administrative bodies. In this State for a considerable period there has been a railroad commission with certain powers over railroads and street railway corporations, and also a gas and electricity commission with certain powers over gas and electricity corporations.

In his this year's message to the Legislature, the Governor called attention to the inadequacy of the laws relating to the regulation and control of the public utilities corporations of this State and recommended the abolishing of the Railroad and Gas and Electricity Commissions, and the creating of a single commission that should have, in addition to the powers already conferred upon the present commissions, such additional powers as might be needed to insure proper management and operation.

This recommendation met the general approval of citizens and of the press, regardless of party, although such approval rested upon the principle involved rather than upon any definite knowledge as to the details of the legislation to be enacted.

Subsequently the bill under consideration was introduced in the Legislature.

This bill has been assumed by the people and the press to be in accord with the recommendations of the Governor and with the public demand, but in many respects it falls far short of this effect and is open to the most serious objection. Great as undoubtedly is the urgency for reform, the magnitude of the proposition is such as to make full consideration and proper amendment imperative.

The good features of the proposed bill are copied almost literally from the United States Interstate Commerce Act. These are supplemented by present New York State legislation, good and bad, regarding gas and electricity. Other good features of the United States Interstate Commerce Act are rejected and in place are substituted features bad in principle and unconstitutional. The present commissions are merged and then redivided upon merely geographical lines; in which process the proposed re-enactment of present provisions, to which I will specifically refer later, would be utterly inapplicable, unjust and unconstitutional.

The powers of the commission for the enforcement of their orders are properly enlarged and penalties provided.

The present Gas and Electricity Commission was not created until 1905, but the inherently bad principle of the present scheme should be sufficiently demonstrated in the denial of the right of municipalities to operate their own lighting plants.

The Railroad Commission has been for many years the subject of popular disapproval and the Railroad Law has been generally conceded to be inadequate, and recent developments, especially in the city of New York, have accentuated the necessity for its reconstruction.

In rebuilding these institutions, let us lay first a sound foundation.

I.

THE COMMISSION SHOULD BE ELECTIVE AND NOT APPOINTIVE.

The proposed bill makes provision for the appointment of commissioners by the Governor, by and with the advice and consent of the Senate. It gives the Governor the absolute power of removal over all these commissioners and the appointment of their successors during a recess of the Senate; also the sole power of appointing the chairman of each commission.

The experience of the people in having their representatives chosen by indirection has not been a happy one. They have grown restive because of their inability to directly elect their representatives to the United States Senate. The abolition of existing State commissions, appointed in precisely the same manner as is proposed for the new commissions, has been plainly demanded.

It is unwise to proceed upon the theory that a mere change in the name and number of commissions, together with an amplification of powers, without any material change in the system of creating the commission, will insure better permanent results.

The existing condition of affairs in the State departments may become at any time an important issue. If the chiefs of those departments are elective, their conduct can be passed upon directly by the people. If they are appointive, their shortcomings are hidden behind the respectable front of the elective candidates,

whose election may be taken as an endorsement of departmental inefficiency and corruption.

The remedy is to give the people more direct control.

The proposed bill continues the present appointive system, with magnified possibilities of the misuse of power and the perversion and suppression of the popular will. It places in the hands of appointive officers, administrative, legislative and judicial powers and functions that should only be exercised by officers elected by and directly responsible to the people.

Experience is complete justification for the fear that if this bill, in its present form, becomes law, the appointive commissions which it creates and endows with unprecedented powers may some day become an asset of a political organization and all the vast machinery which it sets up may fall into the hands of the very corporations now sought to be controlled.

II.

THE PROPOSED BILL VIOLATES THE PRINCIPLES OF HOME RULE FOR MUNICIPALITIES.

It subjects municipalities to the same control, visitatorial and inquisitorial action of the commissions as it does corporations and individuals, and fixes penalties upon municipalities for failure to comply with the commissions' orders.

It prohibits any city, town or village of the State from establishing and operating a plant for the production and distribution of gas or electricity for the benefit of its inhabitants without the consent of the State commissions.

It denies the right of municipalities to prevent monopoly by admitting competing plants or operating their own plants.

This is usurpation by the State of the proper powers of a municipality and an indefensible interference by the central government with the right of the people to govern themselves.

The people of a municipality pay the taxes necessary for the support of their municipal government and it is not the business of the rest of the State to determine whether in the orderly and proper administration of that government the municipality may or may not produce and distribute gas or electricity, or both, within its own confines and at its own expense. Every citizen of a city

or village might vote for a municipal gas plant and yet this proposed commission could arbitrarily render ineffective the unanimous will of that community.

III.

UNFAIR TAX FOR NEW YORK CITY.

This bill provides that the expenses of the commission in the first district shall be borne exclusively by the city of New York; that the expenses of the commission in the second district shall be paid by the State of New York upon the audit of its Comptroller.

This puts an unequal burden upon the city of New York, as after paying the entire expenses of the commission in the first district, it bears its proportion of the expenses of the commission in other parts of the State.

If the board of estimate and apportionment of the city of New York fails to appropriate the amount demanded by the commission in the first district, the Appellate Division of the Supreme Court in the First Department is authorized to determine the amount to be appropriated and the decision of that court shall be final. The city of New York has no rights in the matter. To raise the money so appropriated the comptroller of the city is directed to issue and sell revenue bonds of the city and incur an indebtedness not for any city purpose as allowed by the Constitution, but for the purpose of defraying the expenses of a board of State officers whose powers and jurisdiction are not confined to Greater New York, but extend over other portions of the State.

These provisions and the powers of the commission to fix the amount to be raised by taxation are certainly in conflict with existing laws and the restrictions of the Constitution relating to taxation and the government of cities.

IV.

USURPS POWERS OF ATTORNEY-GENERAL.

The provision in the bill authorizing each commission to create a legal department which shall "represent and appear for the

People of the State of New York and the commission in all actions and proceedings involving any question under this act," is unconstitutional.

It seeks to divest the office of the Attorney-General of duties and powers conferred by the Constitution and is but another advance of the extravagant and illegal policy out of which the special counsel scandals have sprung.

The Attorney-General is the constitutional law officer of the State and his office cannot be abolished piecemeal by the Legislature. The most important activities of the Attorney-General are those which grow out of conflicts between the State and the public utility corporations and I believe that the suggestion to subordinate the Attorney-General to counsel selected by an appointive commission will not be seriously considered by the Legislature.

V.

ONE COMMISSION INSTEAD OF TWO.

The Governor recommended a single commission to take the place of the Board of Railroad Commissioners and the Commission of Gas and Electricity, for the reason that there "are now corporations which are subject to the jurisdiction of both commissions and in some cases the same questions are presented for the decision of both."

The bill creates two commissions, each acting separately within the jurisdiction for which it is appointed. Each will be required to deal with similar questions, and it is difficult to see how any harmony of administration can be obtained by two separate and distinct boards acting upon precisely similar questions in different parts of the State, whose decisions upon those questions may be and probably would be in direct conflict.

To obviate this difficulty and to provide uniformity and harmony of administration, there should be but one commission of general jurisdiction over all public service corporations. The recommendation of the Governor that a commission should be appointed to have jurisdiction over these corporations within the city of New York and another with jurisdiction over them in the rest of the State, is clearly violated in the fifth section of the

bill, which confers exclusive jurisdiction upon the commission for the first or Greater New York district over railroads lying exclusively within that district and of the persons or corporations owning, leasing or operating the same; and also jurisdiction over "street railroads, any portion of whose lines lies within that district, to all transportation of persons or property within that district or from a point within either district to a point within the other district." This clearly gives to the commission of the first district jurisdiction over transportation of persons and property on the street railway whose line may lie almost entirely in the second district, and with exclusive power to control and regulate the same "except so far as concerns the construction, maintenance, equipment, terminal facilities and local transportation facilities thereof."

By the same section of the bill the commission for the second district is given exclusive jurisdiction, supervision and power over all railroads other than street railroads that do not lie exclusively within the city of Greater New York. Thus each commission exercises jurisdiction and power not alone within the district for which it is appointed, but also in the other district; the commission of the second district having exclusive jurisdiction, for instance, over the New York Central & Hudson River Railroad from Buffalo to its terminus in the city of New York, and over other railways whose termini are in the city of New York but traverse other portions of the State.

VI.

ONE COMMISSION OF FIVE.

In the interests of economy, harmony and efficiency, I believe a smaller elective commission of not more than five members, who would give all their time to their official duties and engage in no other occupation, should be created with jurisdiction over the whole State. Substituting one elective commission of five members for two appointed commissions of ten members, would not in any sense injure the framework and substance of this bill or lessen in any degree the proposed powers of the State over public utility corporations. By making the term of a commis-

sioner four years and electing two commissioners one year and three commissioners two years later, the commission would be compelled to go back to the people every other year for instructions and it would be possible for the citizens of the State by direct vote to make a substantial change in the control of the commission at intervals of two years. The commission then would be responsive to the popular will.

The commission should be in daily session instead of being required to meet no oftener than once a month, as is provided in the proposed bill. It should also be permitted to hold sessions in any part of the State.

There are other objections to the bill of lesser importance and I shall be glad to prepare amendments in accordance with these suggestions should you so desire.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Licenses — Veterans.

Hawkers or peddlers' license not sufficient for business of bill-posting.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 26, 1907.*

HON. JACOB W. CLUTE, *Mayor, Schenectady, N. Y.:*

Dear Sir.—Your recent inquiry concerning your authority under the law to relieve soldiers from requirements as to licenses, fee, etc., in procuring a hawker's license has been handed to me for reply.

By Laws of 1896, chapter 371, amended by Laws of 1899, chapter 659, it is provided as follows:

“Section 1. Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state and a veteran of the late re-

bellion, shall have the right to hawk, peddle, vend and sell by auction, his own goods, wares or merchandise, or solicit trade within this state, by procuring a license for that purpose to be issued as herein provided.

“Section 2. On the presentation to the clerk of any county in which any soldier, sailor or marine may reside, of a certificate of discharge from the army or navy of the United States, and a veteran of the late rebellion, such county clerk shall issue without cost to such soldier, sailor or marine, a license certifying him to be entitled to the benefit of this act.”

But you will notice that this provision is not broad enough to cover the business of a bill-poster; neither would such a business be covered by the ordinary peddlers' license issued by municipal authorities, and there is no other exemption in favor of veterans. Your custom of waiving the license fee in such cases is of doubtful authority and the waiving of a bond is the same in principle.

Yours respectfully,

WILLIAM S. JACKSON,
Attorney-General.

Assembly — Members of.

Salaries, pro rata allowance for less than a year.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 3, 1907.

Hon. A. E. BAXTER, *Clerk of the Assembly, Albany, N. Y.:*

Dear Sir.—In your communication of March 31st last, you state that, by special elections held on the 12th day of March, 1907, James E. Fay and Lucius M. Stanton were elected members of Assembly to fill out the terms of two members, recently deceased. You also state that these former members had received their mileage and part of their yearly salaries, and you ask what mileage and salaries these new members are entitled to receive during the session.

Article III, section 6, of the State Constitution provides that each member of the Legislature shall receive for his services an annual salary of one thousand five hundred dollars, with mileage.

The salary is allowed for a year's service of a member. If his tenure of office is less than a year, he is entitled to a pro rata amount of the annual salary. Each member who attends a session is entitled to his full mileage.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Business Corporations Law.

Nassau Co-operative Building and Loan Association may organize for purpose of any lawful business not authorized by Railroad Law, Banking Law and Insurance Law.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 5, 1907.

KIENDL BROTHERS, *Counselors at Law*, 2590 Atlantic Avenue,
Brooklyn, N. Y.:

Dear Sirs.—Replying to your letter of March 25, 1907: In our letter of March 15, 1907, to M. V. Dorney, Esq., secretary of the Nassau Co-operative Building and Loan Association of the county of Kings, we intended to express no opinion that would conflict with the opinion given you by the Superintendent of Insurance under date of February 26, 1907.

The Business Corporations Law provides that a corporation may be organized thereunder for the carrying on of any lawful business not authorized by the Railroad Law, the Banking Law, the Insurance Law, etc. In determining the purposes for which a business corporation may be organized, it is necessary to proceed by a process of elimination, whereby any purpose for which a corporation might be organized under some other general law would be excluded. Therefore, any of the purposes authorized under subdivision 1 of section 170 of the Insurance Law would

be excluded from the purposes for which a business corporation might be organized. This answers all the questions you ask.

The mere recital in a certificate of incorporation of purposes and powers other than those which the corporation may lawfully exercise confers no authority in respect thereto.

If any business corporation seeks to exercise powers which are conferred upon corporations organized under the Insurance Law, it can be proceeded against whenever proper information has been furnished in accordance with the provisions of the Code of Civil Procedure.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Executive Law — Public Officers' Law.

Notary Public. method and time of filing oath of office of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 10, 1907.

WALTER A. SHEPARDSON, Esq., *Norwich, N. Y.:*

Dear Sir.—Your favor of the 4th instant inquiring as to the method and time of filing the oath of office of a notary public, is received. Section 83 of the Executive Law provides:

“If a person appointed notary public in and for any county, shall not file his oath of office as such notary public in the office of the clerk of such county within 15 days after the notice of his appointment is so mailed, or within 15 days after the commencement of the term for which he is appointed, his appointment and office as such notary public shall be deemed vacant.”

Section 81, of the same law, provides:

“That the term of office of such notary public hereafter appointed, unless to fill a vacancy, shall be two years from the 30th day of March of the year in which he shall be appointed.”

Section 10 of the Public Officers' Law provides:

"An oath of office may be administered by any officer authorized to take within the state the acknowledgment of the execution of a deed of real property, or by an officer in whose office the oath is required to be filed. * * * The oath of office of a notary public or commissioner of deeds shall be filed in the office of the clerk of the county in which he shall reside."

In my opinion, a person appointed a notary public has the benefit of either alternative provided for in section 83 of the Executive Law quoted above, that is, he has both fifteen days after the mailing of his notice of appointment, and also fifteen days after the commencement of his term on March 30th in which to file such oath.

Under the provisions of the law, as stated, it appears that a notary may take his oath before any of the officers named, and file it with the County Clerk. It is desirable, however, that a notary should personally appear at the County Clerk's office wherever such appearance can be secured.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Cities — Yonkers.

Saturday half holidays for laborers and employees, proposed legislation regarding.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 10, 1907.

MESSRS. BRENNAN & CURRAN, *Yonkers, N. Y.:*

Gentlemen.—Yours of March 20th received. You state that the Common Council of the city of Yonkers has adopted a resolution that "An act be submitted to the legislature authorizing the city of Yonkers to grant a half holiday on Saturday with pay to

all laborers per diem or otherwise, during the months of July and August of each year," and you ask for an opinion as to the constitutionality of such proposed legislation.

Prior to the constitutional amendment of 1905, such legislation would certainly be objectionable as being a diversion of municipal moneys to other than municipal purposes; but this objection seems to be entirely obviated by the amendment referred to which, in part, is as follows:

"Section 1. And the legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town or village or other civil division of the state by any contractor or subcontractor performing work, labor or services for the state or for any county, city, town, village or other civil division thereof."

This amendment was inspired by the previous adverse decisions of the courts and was intended to be, and is in fact, broad enough in its scope to meet the situation referred to in your communication.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

State Institutions.

Juvenile delinquents, commitment of, to House of Refuge, Randall's Island and State Industrial School, Rochester.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE, .

ALBANY, April 19, 1907.

HON. JOSEPH P. BYERS, *Superintendent of New York House of Refuge, Randall's Island, N. Y.:*

Dear Sir.—In reply to your letter of March 29th, relative to the commitment of juvenile delinquents to your institution and to the State Industrial School at Rochester, would say that there

is an apparent inconsistency in the statutes relating to this subject but it disappears largely upon a careful examination of the matter.

Section 2 of chapter 167 of the Laws of 1904, among other amendments, provides that section 124 of chapter 546 of the Laws of 1896, known as the State Charities Law, shall read as follows:

“ Male children under the age of sixteen years may be committed from the rural counties of this state as vagrants or on the conviction of any criminal offense by any court having authority to make such commitments to the State Industrial School or the house of refuge established by the society for the reformation of juvenile delinquents; but such children in the counties of New York and Kings shall be committed to the house of refuge of New York City established by said society. But no child under the age of twelve years shall be committed or sentenced to either of such institutions for any crime or offense less than felony * * *.”

This act became a law March 28, 1904, and went into effect on June 1, 1904. Chapter 388 of the Laws of 1904 amends section 701 of the Penal Code to read as follows:

“ Where a male person under the age of twelve years is convicted of a crime amounting to felony, or where a male person of twelve years and under the age of sixteen years is convicted of a crime, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge under the provisions of the statute relating thereto. Where the conviction is had and the sentence is inflicted in the first, second or third judicial districts, the place of confinement must be a house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York; where the conviction is had and the sentence inflicted in any other district, the place of confinement must be in the state industrial school * * *.”

This act became a law on April 26, 1904, and went into effect on June 1, 1904.

It will be seen from the foregoing that both acts took effect on the same day, but the act amending the Penal Code, chapter 388, was passed subsequently to chapter 167, and is broader in its scope, so far as relates to the question of commitments, than is the provision of chapter 167 above quoted.

I am, therefore, of the opinion that chapter 388 should control as to the commitment of juvenile delinquents, and that all commitments from the first, second or third judicial districts of the persons mentioned in section 701, should be to the House of Refuge established by the managers of the Society for the Reformation of Juvenile Delinquents in the city of New York, and that where commitment is made in districts other than the first, second or third districts, the commitments should be to the State Industrial School at Rochester.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Village Law — Elections.

Qualification of voters upon propositions, etc.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 20, 1907.

Hon. JOHN R. YALE, *Brewster, N. Y.:*

Dear Sir.—Your communication inquiring as to the qualifications of voters upon propositions at a village election and asking various questions in regard thereto is received and in my judgment these questions should be answered as follows:

The statute, section 41, subdivision 2, of Village Law, prescribes the qualifications of such voters as follows:

“To entitle him to vote upon a proposition he must be entitled to vote for an officer and he must also be the owner of property in the village assessed upon the last preceding assessment roll thereof; a woman who possesses the qualifications to vote for village officers except the qualification of sex

who is the owner of property in the village assessed upon the last preceding assessment roll thereof is entitled to vote upon a proposition to raise money by tax or assessment or for the dissolution of the village."

I assume that the proposition to be submitted in your village is a proposition to raise money by tax or assessment.

Question 1.— Can a person who is the owner of real estate which was owned by another person at the time of the last assessment roll, and has been transferred to the present owner, and upon which the former owner paid a tax, vote?

Answer.— Yes, if said property was assessed on the last preceding assessment roll and such person have the other qualifications.

Question 2.— Can a person who is the owner of real property which was wrongly assessed to the name of a tenant or occupant or agent, vote?

Answer.— Yes, if said property was assessed on the last preceding assessment roll and such person have the other qualifications.

Question 3.— Where property is owned jointly by husband and wife, can both vote? If either, which one?

Answer.— Both can vote if said property is assessed on the last preceding assessment roll.

Question 4.— Where two brothers own property jointly can both vote?

Answer.— Both can vote if said property is assessed on the last preceding assessment roll.

Question 5.— Where a piece of property is owned jointly by father and daughter, and both have the qualifications to vote at a town meeting, the property being assessed to them both upon the last preceding assessment roll, can both vote, and if not which one?

Answer.— Both.

Question 6.— Where property is held in trust for children, and is assessed to the mother, and two of the children are eligible to vote, and the father has the management and care of the property how is that property to be represented by vote upon a proposition?

Answer.— Sufficient facts are not stated to answer this question definitely. The person holding the legal title to the property

can vote; if the legal title be vested in a trustee then the trustee has the right to vote.

Question 7.—Where a piece of property is owned by four tenants in common, some of whom are residents of the village, and it was assessed upon the last assessment roll to one of the owners as agents, who is entitled to vote?

Answer.—All the *resident* owners can vote; that is such of the tenants in common as are residents and possess the other qualifications for voting.

Question 8.—Where real estate was assessed upon the last assessment roll to a person now deceased, who by his will gives the use of the property to his widow for her life time, and upon her death to his four children, all of whom are now of age, and if any of them die to go to their heirs, who is entitled to vote?

Answer.—If, as I understand the question, the widow has a life estate and four other persons have vested remainders in said property and said five persons are otherwise qualified, they can all vote.

Question 9.—Can a person who was assessed for personal property upon the last assessment roll, and is now the owner of such personal property, vote?

Answer.—Yes.

Respectfully yours,
WILLIAM S. JACKSON,
Attorney-General.

Towns—Special Meetings.

Town of Leroy. Method of submitting proposition to build bridge.

STATE OF NEW YORK,
ATTORNEY-GENERAL'S OFFICE,
ALBANY, April 20, 1907.

HON. S. PERCY HOOKER, *Senate Chamber, Albany, N. Y.:*

Dear Sir.—I am in receipt of your inquiry as to the method of submitting a proposition to build, and raise money to build

a bridge in the town of Leroy, together with memorandum showing the proceedings of the Town Board upon that subject. The statutes, so far as applicable, provide as follows:

"Towns * * * shall be liable to pay the expenses for the construction and repair of its public free bridges constructed over streams or other waters within their bounds." (Section 130, Highway Law, as amended by chapter 321 of the Laws of 1902.)

"The board (of supervisors) may upon the application of any town liable or to be made liable to taxation, in whole or in part, for constructing, building, repairing or discontinuing any highway or *bridge* therein or upon its borders, pursuant to a vote of a majority of the electors of such town at an annual town meeting or special town meeting called for that purpose, taken pursuant to sections 30, 31 and 32 of the town law, * * * authorize such town or towns to construct, repair, build or discontinue such highway or *bridge* and to authorize said town or towns to borrow such sums of money therefor, for and on the credit of such town or towns as may be necessary according to a written estimate in items of the fair cost thereof." (Section 169, County Law, as amended by chapter 469 of the Laws of 1903.)

"* * * not more than \$500 * * * shall be expended upon any highway or *bridge* except in pursuance of a contract made by a contractor with the commissioners of highways of the town or other officer designated by the board of supervisors and approved by the town board, no members of which shall be interested therein. If such highway or bridge shall be wholly or partly within the limits of an incorporated village, the consent of a majority of the trustees of such village shall be necessary for the action of the board of supervisors as herein provided." (Section 70, County Law.)

"Special town meetings shall also be held whenever twenty-five taxpayers upon the last town assessment roll shall, by written application addressed to the town clerk, require a special town meeting to be called * * * to vote upon

the question of raising and appropriating money for the construction and maintenance of any bridges which the town may be authorized by law to erect or maintain * * * or to vote upon or determine any question, proposition or resolution which may be lawfully voted upon or determined at a special town meeting." (Section 23, Town Law.)

" * * * the town clerk shall at least ten days before the holding of any special town meeting cause notice thereof under his hand to be posted conspicuously in at least four of the most public places in the town, which notices shall specify the time, place and purposes of the meeting." (Section 24.)

"All votes * * * upon any proposition to raise or appropriate money or incur any town liability exceeding \$500 shall be by ballot." (Section 31.)

"No proposition or other matter * * * shall be voted upon any ballot at any town meeting unless the town officers or other persons entitled to demand a vote of the electors of the town thereon shall, at least twenty days before the town meeting, file with the town clerk a written application plainly stating the question they desire to have voted upon and requesting a vote thereon at such town meeting * * *. The town clerk shall * * * give at least ten days' notice posted conspicuously in at least four of the most public places in the town of any such proposed question, and that a vote will be taken by ballot at the town meeting mentioned." (Section 32.)

A reading of these provisions indicates that the special election which is proposed to be held can only be held upon the petition of twenty-five taxpayers and not upon any action of the town board. Procedure should be as follows: First, the petition of twenty-five taxpayers assessed on the last preceding assessment roll of the town should be filed with the Town Clerk twenty days before the special town meeting, such petition to plainly state the question to be submitted. The form of resolution to be adopted by your Town Board should be contained in this petition, but should be amended so as to read as follows:

“ Shall the town of Leroy build a bridge over Oatka creek in the village of Leroy, extending with its approaches over Church and Mills street in the said village, and shall the said town of Leroy issue its bonds for a sum not to exceed \$20,000 in payment thereof, and shall the said town raise by levy of a tax a sufficient amount to pay such bonds in ten annual payments, and a further sum to pay the interest upon the same, and shall application be made to the board of supervisors of the county of Genesee for authority so to do? ”

At least ten days' notice of the special town meeting must be given by the town clerk, which notice shall include the question to be submitted, the same to be published as required by statute.

If a proposition be adopted at the town meeting, then the consent of a majority of the trustees of the village of Leroy shall be obtained.

Application should then be made to the board of supervisors for authority under section 69 of the County Law above quoted.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Town Law.

Assessor, town of Fowler, failure of to take oath of office within statutory time.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *May 11, 1907.*

Mr. G. M. HOLMES, *Supervisor, Hailesboro, N. Y.:*

Dear Sir.— I am in receipt of your communication of the 6th inst. in which you ask if the office of assessor of the town of Fowler is vacant because of the fact that the assessor who was elected did not take the oath of office until more than ten days after he had been notified of his election by the town clerk.

Section 51 of the Town Law provides, among other things, that every person elected or appointed to any town office except justice of the peace shall, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, take or subscribe before some officer authorized by law to administer oaths in his county, a constitutional oath of office and such other oath as may be required by law, which shall be administered and certified by the officer taking the same without reward; and a neglect or omission to take and file such oath, or a neglect to execute and file, within the time required by law, any official bond or undertaking shall be deemed a refusal to serve, and the office may be filled as in case of vacancy.

It was held in the matter of Drury, 39 Misc. 288, that the provision of the Town Law relative to the time within which one elected a town clerk must take the constitutional oath of office and file it in the office of the town clerk are directatory merely. Where he makes and files such an oath before his term begins and before the office has been declared forfeited by judicial action, no vacancy exists and the town board cannot appoint.

The court, in delivering the opinion in this case, says:

“Therefore, according to the current authority of this State and the weight of authority in other States, it must be held that, since the applicant took and filed his oath prior to the beginning of his official term and prior to the appointment of one Taylor by the town board, the applicant did not forfeit his office by the technicality of his failure to act within the statutory time.”

The Drury matter above referred to was a case of a town clerk who failed to file his oath within the statutory time, and as the same section applies to assessors and town clerks, this decision cited would be applicable in the case of a town assessor.

Your truly,

WILLIAM S. JACKSON,
Attorney-General.

Highway Law — Sections 50-51.

Special town meeting, Groveland, for change from labor to money system.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, May 29, 1907.

LOCKWOOD R. DOTY, Esq., *Geneseo, N. Y.*:

Dear Sir.—Your favor of the 27th inst. is received, inquiring as to whether there is any legal objection to the town of Groveland holding a special town meeting for the purpose of voting upon a proposed change in its system of taxation for working and repairing its highways. The facts, as I understand them, are that the town of Groveland in 1903 voted to change its system of taxation for working its highways from the labor system to the money system. It continued under the money system until March, 1907, when it voted to return to the labor system. It is now proposed to hold a special town meeting for the purpose of submitting the question as to whether the town shall again change from the labor to the money system. I see no legal objection to this proposal.

Section 50 of the Highway Law gives specific authority to any town to change its system of taxation for working and repairing its highways, and section 51 of that law provides that a special town meeting may be called, upon the written request of twenty-five taxpayers, to vote upon that question.

There is no restriction contained in the statute upon this right to vote except that contained in said section 51, as amended by chapter 108 of the Laws of 1905, which provides that a town which has adopted the money system of taxation cannot again vote upon the question of changing its system of taxation until at least four years have elapsed since the money system of taxation was adopted. This restriction relates entirely to changing from the money system to the labor system and does not apply to the proposed change from the labor system to the money system.

Yours truly,

WILLIAM S. JACKSON,

Attorney General.

Highway Law — Section 53.

Poll tax. Failure to pay. Method of procedure to collect.
(Section 70-71, Tax Law.)

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *June 6, 1907.*

E. M. WILTSIE, Esq., *Panama, N. Y.:*

Dear Sir.—Your recent letter making certain inquiries in regard to poll taxes for highway purposes was duly received, but owing to the great number of inquiries received at this office previous to yours, some delay has occurred in reaching and answering your communication.

You inquire as to the method of procedure in the event of the failure of any resident to pay a poll tax assessed to him under section 53 of the Highway Law. Section 65 of the Highway Law provides in substance that in those towns in which the money system of taxation has been adopted, any person who is taxed a poll tax for highway purposes as provided by section 53 of this chapter, and who does not pay such tax in the manner and at the time prescribed by law, shall be liable to a penalty of \$5.00 and that the penalties therein imposed may be recovered by action by the overseer of highways as such or by the highway commissioner in towns having no overseers.

Sections 70 and 71 of the Tax Law provide the method to be pursued by the collector of taxes upon receiving the tax roll and warrant, and after providing for the posting of the usual notices and for his attendance at the place appointed in said notices for a period of 30 days, in substance provide that after the expiration of such period of 30 days the collector shall call at least once on every person taxed on such roll whose taxes are unpaid, at his usual place of residence if he is an actual inhabitant of such tax district, and demand payment of the taxes charged to him on his property.

While these provisions of the law are not made specifically applicable to the collection of poll taxes, it would probably be safer to pursue this course before instituting an action to recover

penalties. In other words, the collector should call at the place of residence of the person assessed for poll tax after the expiration of the thirty day period, and if the person so assessed appears to keep himself concealed for the purpose of avoiding the demand of the collector, such demand should be made upon a person of suitable age and discretion at the delinquent's place of residence.

I do not believe that a letter written by you as justice of the peace would be sufficient compliance with this provision.

In an action to recover the penalty, all jurisdictional facts should be proved, such as the assessment of the taxes, the delivery of the roll and warrant for the collection of such tax to the collector, the posting by the collector of proper notices and the call at the residence of the person assessed and the demand. This would seem to require the presence of the collector as a witness in these actions. If judgment be ultimately recovered for the penalty, section 3026 of the Code of Civil Procedure provides for the issuance of an execution thereon, which shall "command a constable, if sufficient personal property cannot be found to satisfy the judgment, to arrest the judgment debtor, to convey him to the jail of the county," etc.

I hope this is sufficiently explicit to answer all questions which you ask.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Labor Law — City Employees.

Whether public officers of the city of New York may exact signing release regarding wages, etc. (Section 3, chapter 415, Laws of 1897.)

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 7, 1907.

HERMAN ROBINSON, Esq., *Financial Secretary, Central Federated Union, 25 Third Avenue, New York City:*

Dear Sir.—In reply to your favor of the 14th ult., requesting my opinion as to whether a public officer of the city of New York

has the right to exact the signing of a release and agreement by any city employee, as follows:

"In consideration of my employment by the City of New York, I hereby agree to work for and accept the wages of per day, or such other rate as may at any time be fixed for my position by the Department in which I am employed, or other proper authority, and to release the City of New York from any claim or cause of action that might accrue to me by reason of the fact that at any time during my employment by the city of New York the rate of wages paid to me may be less than the prevailing rate in the city of New York for similar occupation.

Witness:"

This agreement is in express terms a direct violation of section 3 of the Labor Law (chapter 415, Laws of 1897, as amended by chapter 506 of the Laws of 1906), and an officer who permits employment under such condition renders himself liable to the penalties prescribed in section 4 of the Labor Law, which reads:

"Section 4. Violations of the Labor Law.—Any officer, agent or employee of this state or of a municipal corporation therein, having a duty to act in the premises, who violates, evades or knowingly permits the violation or evasion of any of the provisions of this act shall be guilty of malfeasance in office and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee, otherwise by the governor. Any citizen of this state may maintain proceedings for the suspension or removal of such officer, agent or employee and may maintain an action for the purpose of securing the cancellation or avoidance of any contract which by its terms or manner of performance violates this act or for the purpose of preventing any officer, agent or employee of such municipal corporation from paying or authorizing the payment of any public money for work done thereupon."

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

Insurance Law -- Section 26 -- Municipal Corporations.

Right of officers of village or towns to insure property in mutual or co-operative fire insurance companies not doing business in the State of New York.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, July 12, 1907.

Mr. J. T. RYAN, *Post-office Box 1010, New York City:*

Dear Sir.— You have requested my advice relative to the right of officials of a village, town or other municipality to insure the property thereof in a mutual or co-operative fire insurance company, or in a foreign insurance company, not authorized to do business in this State.

It is a well settled principle of law in this State in regard to mutual and co-operative insurance companies, that the insured becomes a member of the corporation, and upon entering into such relationship is endowed with all the rights and becomes subject to all the liabilities of a member. Each person insuring in companies of that character becomes at once an insurer and insured.

Villages, towns and cities are municipal corporations. (General Corporations Law, section 3, subdivision 1).

If such a municipal corporation were to be permitted to insure its property in a mutual or co-operative fire insurance corporation, it would thereupon become an insurer of all the other members of such corporation. There is not to be found in the statutes of this State any provision conferring such powers or privileges upon municipalities, and it seems to me if the officials of a municipality, who are charged with the duty of administering its affairs, enter into contracts beyond the scope of their authority, that they thereby subject themselves to the hazard of individual liability.

(See *White v. Madison*, 26 N. Y. 118.)

In the case cited it was held that the power of an agent to insure the property of his principal does not authorize an insurance in a mutual company thereby making the principal an insurer of others.

Respecting the insurance of property of a municipality in a foreign fire insurance company, not authorized by law to do business in this State, I deem it only necessary to call your attention to the provisions of the Insurance Law, section 26, which require fire insurance companies to make certain deposits of securities for the benefit of all the policy holders before being permitted by the Superintendent of Insurance to transact business within this State. This requirement is for the protection of policy holders, and I know of no reason why municipal authorities should be permitted by making insurances not so safeguarded to deprive the municipality of the protection afforded by such deposits.

Yours respectfully,

WILLIAM S. JACKSON,

Attorney-General.

Tax Law (Subdivision 7, Section 4) — Corporations.

Society of St. Johnland, exemptions from taxation of lands owned by.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, August 2, 1907.

JOHN F. KELLY, Esq., *Kings Park, N. Y.:*

I am in receipt of your favor of June 24, 1907, in which you submit information concerning the matter of the taxation of lands owned by the Society of St. Johnland and request, in behalf of the officers of the society and the local officials of the town, my opinion as to the exemptions to which the society is entitled.

Your letter states:

“That the tract of land belonging to the institution, all together, consists of 500 acres. Of this amount of acreage, including the buildings and grounds surrounding them, all that is used in any way by the institution for the maintenance thereof consists of the following: Between 20 and 30 acres for farming, about 10 acres covered with buildings,

3 or 4 acres for cemetery purposes, which, together with the amount used for playgrounds, shore front, etc., would bring the total up to 110 acres.

The following buildings are parts of the institution proper, as we have agreed upon:

The Superintendent's house.

The Muhlenberg house.

The Lawrence house.

The dining hall.

St. John's Inn.

The official building and storeroom.

The Fabric cottage.

The school house.

The boys' house.

Spencer and Wolfe cottage.

The laundry building.

The church.

The carpenter shop.

The blacksmith shop.

The old foundry.

The barns.

The following is a list of the remaining buildings, with the purposes for which they are used:

The 'Cove House,' occupied by Geo. Keitel, with 75 acres of land, not used by the institution.

The old farm house occupied by John Munroe, and the following cottages in 'Cottage Field,' which are rented as follows:

To Herbert DeArmitt.

" Thomas Donnelly.

" Albert Gehres.

" Chas. O'Hara.

" Mrs. Bridget Guerin.

" James McDonald.

All the above are occupied by people outside of the institution who pay a stipulated sum monthly directly to the

institution, but the authorities of the institution claim that the sums so received go toward paying the expenses of the institution.

The following is a list of houses in 'Cottage Field' occupied by employes of the institution who pay no rent directly but the houses are given them as part of the wages received from the institution:

House occupied by	James Monroe.
"	" " Thomas Hazeldine.
"	" " Sidney Smith.
"	" " Stephen Wherheim.
"	" " Jos. Latorre.

All the above houses and the balance of the land cover 390 acres of waste and farm land not used directly in the maintenance of the institution, part of which has been rented and wood cut from it and sold, as they claim, for the maintenance of the institution."

You further state that the town officials and the officers of the Society have agreed upon the foregoing statement of fact. The statute controlling in this matter is subdivision 7 of section 4 of the Tax Law, which I heretofore quoted in full to Senator Burr when he first took this matter up with this department.

Assuming that the objects of the society are such as to entitle it to exemptions in a proper case, I advise you as follows:

The 390 acres of waste or farm land owned by the society and partly let out by it for rentals to tenants to cultivate the land and the remainder thereof used only by the institution for the purpose of taking wood therefrom; the "Cove House," occupied by George Keitel, with the seventy-five acres of land connected therewith; the "Old Farm House" occupied by John Monroe, together with such lands as are used by him therewith; the "Cottage Field" occupied by the following tenants: Thomas Donnelly, Herbert DeArmitt, Albert Gehres, Chas. O'Hara, Mrs. Bridget Guerin and James McDonald, are subject to taxation because not used by the society in the direct prosecution of its objects.

All the rest of the 500 acres of land owned by the institution would be, on the assumption above made as to the objects and purposes of the society, exempt from taxation; that is to say, between twenty and thirty acres upon which the institution carries on farming for the direct maintenance of its inmates; about ten acres covered with buildings, including the five cottages of employees in "Cottage Field," and the three or four acres used for cemetery purposes, together with so much land as is used for playgrounds or otherwise immediately and necessarily used in carrying on the objects of the society.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Primary Election Law.

Construction of chapter 296, Laws of 1907, amending section 13 so as to apply to new and minor parties.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *August 22, 1907.*

J V. JACOBS, Esq., *County Clerk, Rensselaer County, Troy, N. Y.:*

Dear Sir.—Replying to your request of the 16th inst. for a construction of chapter 296 of the Laws of 1907, which amends section 13 of the Primary Election Law so as to apply to new and minor parties:

That section reads as follows:

"Section 13. Application of provisions to political parties.—The provisions of this act shall apply to all political parties."

The amendatory act took effect immediately and on May 6, 1907.

The Primary Election Law provides:

"Section 7. Voting at official primary elections. Subdivision 1.—When, at any official primary election, an

elector shall present himself to the board of primary inspectors and declare his desire to vote, he shall announce his name, residence and party, and if he shall be found to be duly enrolled as a member of such party in that primary district, the board of primary inspectors or a member thereof shall deliver to him * * * ballots," etc.

The original act providing for official primaries was chapter 179 of the Laws of 1898, which, by section 11, made special provision for the making of original enrollments only for the year 1898. Section 13 of the Primary Election Law, prior to the present amendment, provided that when a new or minor party elected to come within the official primary system, such party should be subject to the provisions of the act on and after the first day of registration next succeeding. Thereafter its enrollment, primary elections, conventions and committees were to proceed in accordance therewith. Under the working of that provision a new party would enroll at the first regular fall registration, but would not hold official primaries until after the election following that registration. Existing provisions for special enrollments of individual electors cannot be treated as providing for the creation of original enrollments because special enrollments are now prohibited in all cities of the second class and cities containing a population of one million or over, and the town enrollment act, by reason of its sweeping exemptions, applies only to a few rural counties.

An official primary cannot be held in the absence of an enrollment previously made. There is no provision now for the making of an original enrollment to serve as a basis of official primaries to be held prior to the coming election by parties coming this year, for the first time, under the official primary law. The amendment of section 13, while it takes effect immediately, puts that law into gradual operation as to such parties. The amendment under consideration must not be construed to deny to any political party the right to make nominations. Members of parties which cast at the last election for Governor ten thousand votes or more for that office should enroll at the time of registering on the regular registration days to precede the

next general election. They may then participate in official party primaries to be held after the next election.

Since the statutes do not make complete application of the official primary system to the Independence League, the Socialist and Prohibition parties this year, the law must be construed to permit them to nominate for offices to be voted for at the general election of 1907 through unofficial primaries as provided by the rules of those parties and by the existing statutes regulating unofficial primaries.

Since section 57 of the Election Law, providing for independent certificates of nomination remains unchanged, that method of nomination still applies in the cases covered by that section.

As to the preparation of additional space for enrollment books, I am advised by the Secretary of State that the order of the columns should be: First, Republican; second, Democratic; third, Independence League; fourth, Socialist; fifth, Prohibitionist. The Primary Election Law, section 3, subdivision 1, furnishes specific instruction on all matters relating to the arrangement of enrollment books.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Labor Law — Section 3 — State and Municipal Employees.
Constitutionality of clause relating to prevailing rate of wages.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, September 7, 1907.

Ernest Bohrer, Esq., Corresponding Secretary, Central Federated Union, 184 Eldridge Street, New York City:

Dear Sir.—Replying to your favor of the 4th inst., would say that chapter 506 of the Laws of 1906 re-enacts section 3 of the Labor Law, this being the section which contains the clause relating to the payment of the prevailing rate of wages.

Chapter 506 of the Laws of 1906 was passed in view of the constitutional amendment which was adopted by the vote of the people at the general election held in November, 1905. The amendment made section 1 of article 12 of the Constitution of this State read as follows:

“Section 1. Organization of cities and villages. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporation; and the Legislature may regulate and fix the wages or salaries, the hours of work or labor and make provision for the protection, welfare and safety of persons paid by the State, or by any county, city, town, village or other civil division of the State, or by any contractor or subcontractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof.”

Prior to the adoption of the constitutional amendment referred to, and on February 26, 1901, in the case of the People *ex rel.* Rodgers *v.* Coler, reported in 166 N. Y. Reports, page 1, the Court of Appeals of this State had declared the prevailing rate of wages clause of section 3 of the Labor Law unconstitutional so far as it applied to contractors contracting with a city. On January 29, 1904, in the case of Ryan *v.* The City of New York, reported in 177 N. Y. Reports, page 271, the Court of Appeals held the prevailing rate of wages clause of section 3 of the Labor Law constitutional so far as the same applied to direct employees of the State or a municipality thereof. Subsequent to these decisions the Constitution of this State was amended as above stated and thereafter chapter 506 of the Laws of 1906 was passed. Therefore, the prevailing rate of wages clause being that part of section 3 of the Labor Law, reading as follows:

“The wages to be paid for a legal day's work has hereinbefore defined to all classes of such laborers, workmen or

mechanics upon all such public works, or upon any material to be used upon or in connection therewith shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality within the State where such public work on, about, or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Each such contract hereafter made shall contain a stipulation that each such laborer, workman or mechanic employed by such contractor, subcontractor, or other person on, about or upon such public work, shall receive such wages herein provided for. Each contract for such public work hereafter made shall contain a provision that the same shall be void and of no effect unless the person or corporation making or performing the same shall comply with the provisions of this section; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the State or of a municipal corporation pay the same or authorize its payment from the funds under his charge or control to any such person or corporation for work done upon any contract, which in its form or manner of performance violates the provision of this section, but nothing in this section shall be construed to apply to persons regularly employed in State institutions, or to engineers, electricians and elevator men in the Department of Public Buildings during the annual session of the Legislature, nor to the construction, maintenance and repair of highways, outside the limits of cities and villages,"

is now constitutional whether applied to direct employees of the State or a municipality thereof, or to employees of a contractor or subcontractor with the State or a municipality thereof.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Penal Code — Section 379a.

Construction of regarding return of photographs of defendants in criminal actions.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 13, 1907.*

WILLIAM C. MEAGHER, Esq., *Clerk, Police Department, Rochester, N. Y.:*

Dear Sir.—Replying to your inquiry of the 10th inst., in re photographs of defendants in criminal actions:

The act which you ask to have construed is chapter 626 of the Laws of 1907, and amends the Penal Code by adding a new section, which reads as follows:

“Section 379-a. Upon the determination of a criminal action or proceeding against a person, in favor of such person, every photograph of such person and photographic plate or proof taken or made of such person while such action or proceeding is pending by direction or authority of any police officer, peace officer or any member of any police department, and all duplicates and copies thereof shall be returned on demand to such person by the police officer, peace officer or member of any police department having any such photograph, photographic plate or proof, copy or duplicate in his possession or under his control; and such police officer, peace officer or member of any police department failing to comply with the requirements hereof, shall be guilty of a misdemeanor.”

“Section 2. This act shall take effect September 1, 1907.”

A law should not be construed retroactively unless by necessary implication it appears that such was the legislative intention, or unless its substance so requires, or unless the act affirmatively so provides. This act does not purport to relate to cases tried prior to its passage. If it operated retroactively in that respect, it would subject all police departments to the trouble of returning, and to the peril of refusing to return, photographs which, at any

time in the past, however long ago, had been taken in cases where the defendant was subsequently acquitted. It does not seem reasonable to believe that the Legislature would have intended that result without making the intention clearly apparent.

In my opinion, therefore, the act only applies to cases where a criminal action or proceeding is determined on or after September 1, 1907.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

State Institutions — Contracts.

Purchasing committee of superintendents. Not authorized to contract for the supply of any one article to a single institution.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *September 20, 1907.*

KATHERINE B. DAVIS, *Secretary, Purchasing Committee of Superintendents, for State Charitable Institutions, Albany, N. Y.:*

Dear Madam.—I return herewith contract purporting to be made by the purchasing committee of superintendents of State institutions reporting to the Fiscal Supervisor of State Charities and Conron Brothers Company, dated the 21st day of August, 1907, and Joseph F. Scott and yourself individually and by John E. Conron, treasurer, for the Conron Brothers Company.

I perceive from the contract, and am also informed by your Department, that this contract covers an article of supply for a single institution, called the New York House of Refuge, on Randall's Island, which institution is under the immediate control of the corporation known as "The Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York."

I am of the opinion that the contract is invalid for want of power in the committee to make the same.

Chapter 473 of the Laws of 1905, under which the contract was made, does not authorize the committee to make contracts for the supply of an article to a single institution. The statute authorizes only "joint contracts," that is, a contract furnishing supplies to all of the institutions reporting to the fiscal supervisor, or to some of them. The power given to the subcommittee in section 1 of said law, which is section 48 of the State Charities Law, is no greater than the power of the superintendents and managers or trustees present at a meeting called by the fiscal supervisor, and their powers as to letting contracts of purchase are stated in the law as follows:

"The superintendent and managers or trustees present at such meeting shall consider, and shall determine, subject to the power granted to the fiscal supervisor in section 45 of this article, the following matters:

"1. Which articles of supplies it is practicable to purchase for all State charitable institutions, the New York State School for the Blind, and the Elmira Reformatory, or some of them, by joint contracts.

"2. The specifications for articles of supplies, to be purchased by joint contracts.

"3. The provisions of the contracts under which articles of supplies are to be purchased jointly."

It will be perceived from the foregoing that the statute contemplates joint contracts; that is, contracts for supplies for all or some of the institutions, and the word "some" is not used in the sense of "any," but means more than one institution. This section formerly existed as a part of chapter 252 of the Laws of 1902, which provided that such contracts should be executed by "the stewards, under the direction of the boards of managers or trustees." This was amended by chapter 473 of the Laws of 1903, which provided that the contracts should be executed by "the superintendents or stewards," showing that the contracts for supplies were to be executed by the officers of more than one institution.

In chapter 473, Laws of 1903, the following language appears:

“The fiscal supervisor may arrange with the board of managers or trustees of the institutions mentioned in this section for the purchase, by joint contract, of such staple articles of supply as it may be found feasible to purchase for the use of such institutions, or any of them.”

The amendment of 1905 substitutes for the phrase “any of them,” the words “some of them,” thus making it clear that it was to apply to more than one institution.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Election Law.

Term of office of Chairman Board of Inspectors of Election.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 30, 1907.*

C. E. RIPLEY, Esq., *Inspector of Election, Adams, N. Y.:*

- Dear Sir.—Replying to your inquiry of the 28th inst., as to the length of term of the chairman of the board of inspectors of election where the members of the board are appointed for two year terms:

The Election Law contains no express provision defining the term of office of the chairman. Various constructions have been reached upon this question by this department in the past. I am of the opinion that the term of office of the chairman elected by the newly appointed board extends from the time of his election to the end of the term for which he was appointed inspector.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Superintendent of the Poor — Orleans County.

Term of office of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, October 30, 1907.

HON. SANFORD T. CHURCH, *Albion, N. Y.:*

Dear Sir.—Replying to your inquiry of recent date for my opinion relating to the election of a superintendent of the poor in the county of Orleans you state facts as follows:

In November 1905 the incumbent of the office of superintendent of the poor was re-elected for a new term. In the month of December following he resigned the office both as to the unexpired term and the new term for which he had been elected. The board of supervisors being in session appointed a successor to serve until January 1, 1906, and on the latter date the county judge re-appointed the same person to succeed himself. At the general election of 1906 another person was elected superintendent of the poor and he took office January 1, 1907. The question is as to how long the latter official is entitled to hold the office by virtue of his election by the people.

The County Law, section 210, provides:

“There shall continue * * *:

“2. To be appointed by the board of supervisors, if in session, otherwise by the county judge, a county superintendent of the poor, when a vacancy shall occur in such office and the person so appointed shall hold office until and including the last day of December succeeding his appointment, and until his successor shall be elected and qualifies;

“3. To be elected a county superintendent of the poor in a county, when a vacancy shall occur in such office, and the term of which shall not expire on the last day of the next succeeding December, and the person so elected shall hold the office for such unexpired term, which shall be designated upon the ballots of the electors, or until his successor shall be elected and qualifies;

"4. To be elected in each of the counties so having and entitled to have but one superintendent, a superintendent of the poor who shall hold his office for three years from and including the first day of January succeeding his election and until his successor is duly elected and qualifies;

"5. To be appointed by the board of supervisors, if in session, otherwise by the county judge, a superintendent of the poor in a county having and being entitled to but one superintendent, when a vacancy shall occur in such office; and the person so appointed shall hold the office until and including the last day of December succeeding his appointment, and until his successor shall be elected and qualifies * * *."

The Public Officers Law, section 4, provides:

"The term of office of an elective officer, unless elected to fill a vacancy then existing, shall commence on the first day of January next after his election if the commencement thereof be not otherwise fixed by law."

Section 27 provides:

"* * * The term of office of an officer appointed to fill a vacancy in an elective office shall be until the commencement of the political year next succeeding the first annual election after the happening of the vacancy, if the office be made elective by the constitution, or at which the vacancy can be filled by election, if the office be otherwise made elective."

I assume that the county of Orleans is entitled to but one superintendent of the poor and that the election of a superintendent in November 1905 was, in respect to the year, the regular time for the holding of an election at which to elect a sole superintendent of the poor for a full term.

The regular term of such superintendent is three years. Had the person elected to that office in November 1905 taken office on the first of January, 1906, his term would have expired December 31, 1908. The person in office January 1, 1906, being in by appointment of the county judge, could hold only until and including the last day of December, 1906, and until his successor should be chosen and had qualified. The right of the people to

elect in November of 1906 was due to the fact that the person elected by them in November, 1905, had refused to serve and it was the regular term of the person so elected which was to be taken and finished by the person elected by the people in November 1906. Whether such unexpired term was designated on the ballots of the electors cast for the person elected in November 1906 is not stated. Such designation, however, was required to be made, but, if omitted, that error would not, in my opinion, affect the question here.

Subdivision 3 of section 210 of the County Law supersedes chapter 188 of the Laws of 1854, because it is inconsistent therewith, and chapter 498 of the Laws of 1847 was repealed by the County Law, chapter 686 of the Laws of 1892. It was under the two acts last named that the contrary result was reached in the case of the People ex rel. Hatfield v. Comstock, 78 N. Y. 356. Subdivision 3 of section 210 of the County Law plainly provides for an election by the electors to fill an unexpired current term at an intervening general election.

In my opinion the incumbent will be entitled to hold the office until and including the 31st day of December, 1908.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

Highway Manual Law.

Chapter 536, Laws 1904. Constitutionality of.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 31, 1907.*

Hon. WILLIAM B. HARPER, *Seneca Falls, N. Y.:*

Dear Sir.—Your letter making inquiry as to the constitutionality of chapter 536 of the Laws of 1904 is received.

The statute in question is entitled "An act to provide for the publication and distribution of a compilation of the Highway

Laws without expense to the State." It provides in section 1 that the Secretary of State shall "designate a proper person to prepare and publish * * * a revised edition of the highway manual," and in section 2 for the distribution of one copy of such manual to each member of a town board, commissioner of highways and overseer of highways in the State, and then proceeds "the cost of such manuals shall be fixed by the compiler, not exceeding \$1.00 per copy, which together with the expense of distribution by the county clerk shall be a town charge and shall be audited and allowed as other town charges * * *. Each supervisor shall * * * pay to the person designated to compile such manual, the amount due for the books forwarded to his town."

It appears that a volume containing highway laws of the State was compiled and published under this statute in 1904 and a "distribution" thereof sought to be accomplished, and a bill therefor presented by the compiler to the various town boards and that in your county the town boards have refused to audit or pay said bills. The question, therefore, is as to the validity of these bills and as to the liability of the towns to pay the same.

When this measure was pending before the Governor after its passage by the Legislature, the then Attorney-General, under date of April 5, 1904, submitted an opinion holding this act to be unconstitutional, in which opinion, after quoting the provisions of the statute, he said:

"The practical effect of all this is to force the towns of the State to buy books without their consent, to fix the price without their consent, and to tax them to pay this price without their consent. If this may be done, the right of localities to manage their own affairs does not exist. The State Engineer and Surveyor may be authorized by the Legislature to designate someone to manufacture and sell road machines, to employ the horses and drivers to operate the machine and authorize the employee to audit his claim against the town, and any person having goods to sell may avoid the trouble of consulting the purchaser and apply to the Legislature which has power to sell the goods, fix the price and compel the town to pay for them. In my judg-

ment this scheme is unauthorized under the constitution which secures to towns the right of self-government and the control and management of their own affairs."

Later under date of October 4, 1904, the then Attorney-General, in amplification of this position and still holding the law to be unconstitutional rendered another opinion in which, after designating the home rule provisions of the constitution and the decisions of the courts bearing thereon, said:

"The principle established * * * is that while it is competent for the Legislature to bring towns into existence and to provide what their powers and authority shall be and even to go so far as to provide that the power must be exercised and provide procedure to compel its exercise by the town, yet that the business must be done by the town, that the moment a town comes into existence it and its taxpayers have rights reserved to them by the provisions of the constitution of which the Legislature cannot deprive them so long as they exist. The town may be compelled to build a highway but it cannot be compelled to buy the sand of Smith, or stone of Brown or the bridges of Jones. In other words, the Legislature cannot exercise the functions which, under the plan of our governments as given by our constitution, have been from time immemorial exercised by the town * * *. I am not aware of any case that holds that the Legislature may take into its own hands the inherent function of local officers so long as these officers exist. They may modify the scope of the power and duty but whatever the power and duty may be it must be exercised by the local officers. The Legislature can no more direct of whom the town shall buy or what price it shall pay, than it can direct in whose favor a local court which it creates, shall decide a cause."

In these opinions and in the reasoning upon which they are based I unhesitatingly concur.

The courts of this State have ever been vigilant in protecting the rights of localities to conduct and regulate their own affairs from any encroachment from whatsoever source.

In the case of *The People ex rel. Bolton against Albertson*, 55 N. Y. at page 57 the court said:

“The right of self-government lies at the foundation of our institutions, and cannot be disturbed or interfered with, even in respect to the smallest of the divisions into which the State is divided for governmental purposes, without weakening the entire foundation; and hence it is a right not only to be carefully guarded by every department of the government, but every infraction or evasion of it to be promptly met and condemned; especially by the courts, when such acts become the subject of judicial investigation.”

See also to the same effect opinions of the Court of Appeals in the following cases:

Rathbune v. Wirth, 150 N. Y. 459.

People ex rel. D. W. & P. R. Company v. Batchellor,
53 N. Y. 128.

People ex rel. Metropolitan Street Ry. Co. v. Tax Commissioners, 174 N. Y. 417.

If the Legislature can direct the purchase of a commodity by a town and specify the person from whom such purchase is to be made, the price to be paid and that payment shall be made, it can direct the specific act to be done in the exercise of all other functions of local government and the principle of home rule established and guaranteed by the constitution would become a meaningless provision. As is well stated by Cooley in his work on constitutional limitations, “to hold that the Legislature may go even further and under its power to control the taxation of the political divisions and organizations of the State may compel them without the consent of their citizens to raise money for such or any other unusual purposes or to contract debt therefor, seems to be introducing new principles into our system of local self-government and to be sanctioning a centralization of power not within the contemplation of the makers of the American Constitution.”

I am, therefore, of the opinion that this statute is void as being in violation of section 2 article 10 of the State Constitution and that your town is not liable for the payment of this claim.

I come to this conclusion without reference to the suggestion made that the Legislature, at its last session, made provision for the appointment of a special committee to investigate highway matters and to revise and codify the Highway Laws which function, if performed and approved by the Legislature, would render the books in question valueless.

Respectfully,

WILLIAM S. JACKSON,

Attorney-General.

REPORTS AND OPINIONS RENDERED THE COMMISSIONERS OF THE LAND OFFICE.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *February 1, 1907.*

I Do Hereby Certify that I have examined the annexed application of Edward C. Wright for advertisement and sale of unappropriated State lands, and certify that the same is made in accordance with the provisions of the statutes relating thereto; and also, that it is made in accordance with the rules and regulations of the Commissioners of the Land Office *except that a small part of the lands applied for appears to be within the blue line of the Erie Canal and such part is not subject to sale by the Commissioners of the Land Office.. I would further recommend if an appraisal be ordered, that before such appraisal be made an accurate map and survey be required, to show the exact area of lands applied for outside of blue line of canal, subject to approval of State Engineer and Surveyor.*

WILLIAM S. JACKSON,

Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *February 7, 1907.*

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of
JAMES CLINE for a grant of land
under waters of St. Lawrence River at
Alexandria Bay in Jefferson County,
New York.

To the Commissioners of the Land Office:

Gentlemen.—The above entitled application having been referred to your committee on remonstrances, together with the remonstrance of George H. Burtch and others, we have the honor to report that on the 4th day of February, 1907 a stipulation was duly filed with your committee, signed by the attorney for the remonstrant and the attorney for the applicant, whereby the said remonstrance was withdrawn.

We would therefore recommend that the matter take the usual course of uncontested applications.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General.

JULIUS HAUSER,

State Treasurer.

FREDERICK SKENE,

State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 26, 1907.*

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of
CHARLES M. REYNOLDS for a grant of
land under the waters of the East River
in the Borough of Queens, New York
City for purposes of commerce.

To the Commissioners of the Land Office:

Gentlemen.—The undersigned, to whom was referred the above-entitled application against which a remonstrance was filed by the city of New York, have the honor to report:

The application was filed with your Honorable Board on January 28, 1907 for a grant of .2607 acre adjoining Harsell street, Long Island City. The remonstrance of the city of New York was made upon the ground that the title to the land under water of the East river at this point was originally vested in the town of Newtown by virtue of colonial grants and that the title of such town thereto, became vested in the city of New York under the city charter. This remonstrance of the city appears to have been purely formal so as to preserve a record of consistency regarding applications for lands under water within the limits of the present city of New York.

Your committee is of the opinion that the title to the lands under water did not pass by colonial grant to the town of Newtown. In fact, many grants in this locality have been made by your honorable board and we, therefore, are of the opinion that the remonstrance of the city should be overruled.

But in view of the fact that a small portion of the land applied for lies within the limits of Harsell street if continued, and in view of the fact that section 83 of the charter of the

city of New York, chapter 378 of the Laws of 1897 and chapter 466 of the Laws of 1901, granted in fee to said city in all the public waters within said city all the right, title and interest of the State in and to all lands covered by water as are embraced within the projected boundary lines of any street intersecting the shore line and which street is in public use or which may be hereafter opened for public use extending from high water mark out into said waters, your Committee recommends that a reservation be made in any letters patent which may be made under this application of all lands within the boundaries of Harsell street as projected.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General.

JULIUS HAUSER,

State Treasurer.

FREDERICK SKENE,

State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 26, 1907.*

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of JOHN
WAINWRIGHT for a grant of land under
the waters of Jamaica Bay, in Queens
County for restricted beneficial enjoyment.

To the Commissioners of the Land Office:

Gentlemen.—The above entitled application having been referred to your committee on remonstrances together with the remonstrances of the city of New York and also remonstrance of

Emil F. Barla and others, we have the honor to report that this application is made for a grant of land under the waters of Jamaica Bay consisting of 1.51 acres.

The city of New York filed its usual formal remonstrance to the making of this grant upon the ground that the lands under water of Jamaica Bay was originally vested in the town of Hempstead or town of Jamaica by virtue of various colonial grants.

Emil F. Barla and others remonstrate claiming that the title to the lands under water in question is vested in them as tenants in common by virtue of a certain grant of land under water in Jamaica Bay made by the town board of the town of Hempstead, to August Bossard on April 20, 1897. At a hearing held by your committee on March 5, 1907, at which the applicants and all the remonstrants were present by counsel, documentary evidence was filed showing the water grant above referred to by said town of Hempstead and that a subsequent partition was had between the heirs of August Bossard and that the sale was had in May, 1904, in pursuance of an interlocutory judgment in said action at which the uplands upon which applicant herein predicates his right to the grant from the State was purchased by him. It appears, however, that the lands under water immediately in front of said upland included under said town water grant, were not sold at said sale.

The question as to the ownership of the lands under water of Jamaica Bay is one that has frequently come before your Honorable Board and it has uniformly been maintained that the State was the owner of such lands under water and that the same was not included in colonial grants to the town of Hempstead.

In the matter of the applications of the West Rockaway Land Company and Louis Bossert for grants of land under waters of Jamaica Bay (see proceedings of the Commissioners of the Land Office for 1905, pp. 64 to 66) the same questions arose and the standing committee reported thereon, in view of remonstrances then filed by the corporation counsel of the city of New York that in order to secure determination by the courts as to the title of lands under water in the several creeks, bays or other bodies of water emptying into the Atlantic Ocean between the State and city of New York under colonial grants to the town which after-

wards became incorporated in said city, it had been suggested that the several applicants for grants and the city of New York should unite in the preparation of the agreed statement of facts to be submitted to the Supreme Court in accordance with chapter 179 of the Laws of 1904 with the approval of the Attorney-General, but after a conference had by the Attorney-General with the corporation counsel it appeared that the latter was not ready to submit such statements to the court because a large amount of time would be required in the examination and translation of original Dutch town records and other data and said committee suggested that bona fide applicants for water grants should not be delayed in making substantial improvements by the formal remonstrance of the city and they recommend that such applications take the usual course of uncontested matters.

Your committee is unwilling to reverse the ruling of the former committee and of the Board, and as the lands under water applied for have never been granted by the Commissioners of the Land Office we recommend that the remonstrances be overruled.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General,

JULIUS HAUSER,

State Treasurer,

FREDERICK SKENE,

State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *March 26, 1906.*

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of
GEORGE C. KELLOGG and JOHN F.
O'BRIEN for a grant of land under
waters of Lake Champlain in Platts-
burg, Clinton County, for restricted
beneficial enjoyment.

To the Commissioners of the Land Office:

Gentlemen.—The above entitled application having been referred to your committee on remonstrances together with the remonstrance of the Lake Champlain Pulp and Paper Company, we have the honor to report that at a hearing held by your committee on March 5, 1907, the said remonstrant filed a stipulation withdrawing the said remonstrance and consenting that the grant be made in accordance with a modified map and description which has been approved by the State Engineer and Surveyor. We would, therefore, recommend that this application take the usual course of uncontested matters.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General,

JULIUS HAUSER,

State Treasurer,

FREDERICK SKENE,

State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 3, 1907.

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of JANE
GILFEATHER for a grant of land under
the waters of Gravesend Bay at Coney
Island, in the Borough of Brooklyn,
Kings County, for restricted beneficial
enjoyment.

To the Commissioners of the Land Office:

Gentlemen.—The above entitled application having been referred to your committee on remonstrances together with the remonstrance of the city of New York through its corporation counsel upon the ground that the city of New York claims title to the lands under water by virtue of certain colonial grants made to the several towns which have since been incorporated in the city of New York, we have the honor to report that the matter was heard by your committee on March 5, 1907.

The corporation counsel stated that he was unable at this time to unite with the applicant in the preparation of an agreed statement of facts to be submitted to the Supreme Court with the approval of the Attorney-General, in accordance with chapter 179 of the Laws of 1904.

In accordance with the precedent which has been established of formally overruling the remonstrance of the city on the ground that the State and not the city is the owner of the lands under water applied for and in order that applicants desiring in good faith grants of lands under water for the purpose of making substantial improvements should not be delayed by the formal re-

monstrances of the city, your committee recommends that this application take the usual course of uncontested matters.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General,

JULIUS HAUSER,

State Treasurer,

FREDERICK SKENE,

State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *April 15, 1907.*

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of
SAMUEL T. SHAW for a grant of
land under the waters of Long Island
Sound off Center Island, Nassau
county, for restricted beneficial en-
joyment.

To the Commissioners of the Land Office:

Gentlemen.—The undersigned, to whom was referred the above-entitled application, have the honor to report that this application was filed April 3, 1907, for a grant of 20,654 acres, for the purpose of erecting boat and bath houses, jetties, bulk-heads a sea-wall and a pier or piers, and for filling in a portion of said lands.

The town of Oyster Bay filed remonstrances to the application claiming title to the lands under water applied for under colonial grants made by Governor Andros in 1677.

The State has always assumed to own the lands under water in this locality and has made many grants in this neighborhood, several of which grants were sustained by the Appellate Division in the case of *People ex rel. Underhill* against Saxton and others, notwithstanding the protest of this town, the court holding that presumptively these lands under water belong to the State and not to the town.

We, therefore, recommend that the remonstrance herein be overruled and the application take the usual course of uncontested applications.

Respectfully submitted,
WILLIAM S. JACKSON,
Attorney-General.
JULIUS HAUSER,
State Treasurer.
FREDERICK SKENE,
State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 15, 1907.

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of
J. ROGERS MAXWELL for a grant of
land under the waters of Long Island
Sound at Glencove, Nassau county,
for restricted beneficial enjoyment.

To the Commissioners of the Land Office:

Gentlemen.—The undersigned, to whom is referred the above-entitled application and to which a remonstrance was filed by the town of Oyster Bay, have the honor to report that this applica-

tion was filed March 28, 1907, for a grant of 10.388 acres at Glencove for the purpose of erecting piers, jetties and other structures and for filling in such parts of such lands as may be desirable.

The town of Oyster Bay claims title to the lands under water applied for under a colonial grant made by Governor Andros on September 29, 1677. The matter came regularly on for hearing at a meeting of your committee held on April 9th last when both the applicant and the remonstrant were represented.

In view of the fact that the State has always assumed to own the lands under waters in this locality and has made many grants of lands, and of the decision of the Appellate Division, Third Department, in *People ex rel. Underhull against Saxton*, 15 App. Div. 263, that presumptively the lands under these waters belong to the State and not to the town of Oyster Bay, we recommend that the remonstrance herein be overruled and the application take the usual course of uncontested applications.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General.

JULIUS HAUSER,

State Treasurer.

FREDERICK SKENE,

State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 25, 1907.

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Applications of
WALTER H. FOX and AARON CLOUGH
for a lease of certain farm lands in
the town of Florence, Oneida county,
which were acquired by the State upon
the foreclosure of a mortgage by the
Loan Commissioners of Oneida county.

To the Commissioners of the Land Office:

Gentlemen.—The report of the loan commissioners of Oneida county, dated March 25, 1907, states that they brought action against Aaron Clough, a former tenant of said property, because of his forcibly holding possession and driving off the new tenant, Walter H. Fox, to whom they had leased the premises for the year ending April 1, 1907.

They state that they refuse to rent the lands any longer to Clough because they consider him an undesirable tenant, and because he had been guilty of acts of trespass and waste; that in their lease to Mr. Fox they had inserted a clause which would prevent any further acts of trespass or waste upon the premises. They say that the land is of little value for farming but there is some timber on it and there is danger that this timber may be cut and destroyed unless it is leased to some one who will look after it, and they recommend Mr. Fox as a responsible and reliable tenant who has offered to take a lease of the land for \$15.00 a year. Since the above report was filed Aaron Clough has also filed his petition claiming that he has been in occupancy as a tenant of the said premises for the last twenty-five years and desires another lease for the year ending April 1, 1908. He states that he has paid \$15.00 annual rent, but is now willing to pay \$40.00 for a lease for the ensuing year. He claims that he is being

persecuted and alleges that the only trees cut down by him on said premises were cut down with the knowledge and consent of the former loan commissioner of Oneida county, and were used for fencing said farm.

It further appears from a recent opinion of the Appellate Division, Fourth Department, in the case of Watkins & Pritchard, loan commissioners, against Clough, that the power of the loan commissioners to lease said premises was denied, the court holding that such power rested only in your Honorable Board.

I would recommend, in view of the conflicting statements of the loan commissioners and Mr. Clough, that the matter be referred to the Comptroller for his investigation through the aid of one or more of the land board appraisers.

Yours truly,

WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 24, 1907.

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of
LEROY H. GATES, as executor of the
last will and testament of CHARLES O.
GATES, deceased, for an extension of
time within which to comply with the
conditions contained in the letters
patent.

To the Commissioners of the Land Office:

Gentlemen.—The enclosed application having been referred to the undersigned for examination and report, we beg to submit the following:

That an examination of the verified petition shows that this application was filed with your honorable board on March 28,

1907, and was duly approved by the Attorney-General as to form. Accompanying the petition are the original letters patent to Charles O. Gates, dated April 14, 1902, of lands under water at Peacock's Point, in the town of Oyster Bay, Nassau county, New York, containing 21 $35/100$ acres, which were granted for the purpose of erecting a breakwater and sea-walls to prevent the sea from cutting into the beach and whereby a harbor or basin might be provided for vessels to lie in safety, and also for the construction of a dock, affording dockage to sea-going vessels. These letters patent contain the condition that unless the said proposed improvement should be completed within five years the grant should cease and determine.

In this application it is shown that Charles O. Gates, the patentee, partly constructed a sea-wall and breakwater at an expense of over \$4,000, and died on May 8, 1906, before he completed the work which he had planned. The petitioner, his executor, states that he intends in good faith to appropriate the lands under water for the purposes described in the original grant, and asks for an extension of three-years' time for this purpose. The application is made in accordance with the rules and regulations of your Honorable Board, and is herewith returned for executive action.

Respectfully submitted,
WILLIAM S. JACKSON,
Attorney-General.
FREDERICK SKENE,
State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, April 24, 1907.

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of
AGNES SOMERVILLE for a confirmatory
grant of certain lands in Kings county.

To the Commissioners of the Land Office:

Gentlemen.— This application is for a confirmatory grant, pursuant to section 10 of the Public Lands Law, of certain lands which were patented to Agnes Somerville on February 3, 1906, pursuant to a resolution of the Land Board adopted October 26, 1905, said lands being situated in the former town of New Utrecht, Kings county, New York.

It appears from the petition and also from the report of the Comptroller that two errors crept into the description of these lands, as contained in the notice of sale and also in the letters patent, one of said errors being in erroneously referring to chapter 374 of the Laws of 1873, instead of 364 of the Laws of that year; the other error consisted in erroneously describing the southwest boundary of the lot as extending 126 5/12 feet instead of 426 5/12 feet. The report of Merritt Peckham, Jr., land clerk of the State Engineer and Surveyor, who conducted the sale held on January 17, 1906, states that there was but one bidder at the sale, and that the amount received covered the cost to the State and all the expenses in connection with the sale, and that in his opinion no greater amount would have been bid had the description been correctly given.

Section 10 of the Public Lands Law provides that

“ Whenever a sale is lawfully made, or directed to be made by such commissioners, including a sale of land under water, if, at the time of the adoption of the resolution to make the grant, the necessary jurisdictional facts existed to authorize the grant, and by reason of accidental omission or

manifest error (as was the case here) the patent is not actually issued, or has been issued to the applicant deficient or manifestly erroneous in description or otherwise, such commissioners may, in their discretion, and on such terms as seem to them proper, cause to be issued to such applicant, or to persons deriving claim or title from him subsequently to the passage of such resolution, a release or confirmatory grant of such lands or any parts thereof, which release or confirmatory grant shall vest in the grantee therein named such right and estate, to the extent of the right or title of the State in such lands, or parts thereof, as is therein named."

The application appears to have been made in accordance with the requirements of the statutes and rules and regulations of the Land Board, but before any confirmatory grant be made (if such be ordered by your Honorable Board) the applicant should be required to surrender the original letters patent issued to her, dated February 3, 1906, for cancellation.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, June 28, 1907.

To the Commissioners of the Land Office, Albany, N. Y.:

Gentlemen.—Referring to the communication to the Secretary of State from Mr. John A. Bensel, commissioner of docks and ferries of the city of New York, dated May 6, 1907, and which was referred to me by your Honorable Board for examination and report, I have to submit the following:

The dock commissioner calls attention to a request stated to have been made by the corporation counsel of the city of New York on behalf of the Department of Docks in the year 1898, for a grant of all the unpatented lands under water within the limits of greater New York, which request, I understand, has never been formally received by your Honorable Board.

The commissioner, in his informal letter to the Secretary of State, requests that the Commissioners of the Land Office, in pursuance of section 831 of the New York charter, convey to the city of New York all the property, right, title and interest of the people in and to the unpatented lands under water in Greater New York, and the commissioner of docks awaits the decision of the Commissioners of the Land Office before taking any action relative to the several applications now pending before the Commissioners of the Land Office, and which have been forwarded to the commissioner of docks for his approval or disapproval.

Section 831 of the New York charter authorizes but does not direct the Commissioners of the Land Office to convey to the city of New York all the interest of the people in and to so much of the lands under water within the city of New York, which the dock commissioner may deem necessary for the construction of wharves, docks, piers, bulkheads, basins and slips under said charter, but such conveyances shall be made only after compliance with such reasonable rules and regulations as the Commissioners of the Land Office are now empowered to make by law, and nothing shall be so construed as to remove or limit the powers and duties conferred upon them by the statutes of the State and prescribed in other sections and provisions of the New York charter.

Section 83 provides that the city of New York shall have the control of the water front of the entire city only as in this act provided subject, however, to the rights of private owners of property, with power to establish, construct, acquire, own, maintain and enjoy all ferries, public wharves, docks, piers, bulkheads, basins, slips, streets, &c., and all other public structures and facilities necessary or proper for the navigation and commerce of the city. To these ends there was granted in fee to the city all the interest of the State in such lands under water in said city as were embraced within the projected boundary lines of streets, intersecting shore lines, which streets were or might thereafter be opened for public use, extending from high-water mark out into the water so far as the said city might, in the opinion of the municipal assembly or the Department of Docks and Ferries require the same for ferries, public wharves, docks, piers, etc.; and

further provides that the Commissioners of the Land Office shall, from time to time, convey or patent the lands so granted to the city for said purposes whenever required by the Board of Docks.

And by section 85, it is provided that the grants to the city should not impair or affect the existing riparian owners' rights of private property, or the lawful rights of private owners of docks, piers or other structures in any part of said city.

This application is not made in accordance with the provisions of section 83, but is intended to cover also all unpatented land not within projected street lines.

Section 86 of the charter provides that no patent of land under water within the city of New York shall be made except to the city of New York, or to the riparian proprietor. "If the board of docks with the approval of the commissioners of the sinking fund, shall project a plan or plans for the construction of docks between street intersections as aforesaid, and desire a grant of land under water for that purpose, they shall make application therefor to the commissioners of the land office, who thereupon shall give notice to the riparian proprietor before taking action in the matter and shall make such grant to the city for the purposes specified in section eighty-three. Such grant, however, shall be subject to all the rights of the riparian proprietor, and before the city shall construct such public wharves or other structures in front of the land of such riparian proprietor, the city shall make just compensation to such proprietor for the value of all the riparian rights. If the commissioners shall make a grant to the riparian proprietor it shall be confined to soil or land under water in front of the land of such riparian proprietor. If application be made to the commissioners of the land office by the riparian proprietor for a grant of soil or land under water within the city of New York, as herein constituted, such commissioners shall give notice thereof to the board of docks of the city, which shall examine into such application and certify to the said commissioners whether in the opinion of the said board the granting of the same will conflict with the rights of the city under this act or be otherwise injurious to the public interests of the said city. The said commissioners may in their discretion insert such terms and conditions in the grant as are recommended by the board of docks and as will protect the

public interests of the city in respect to navigation and commerce. The validity of any such grant or patent may be judicially determined in an action brought by and in the name of the city."

In the case of *people ex rel. City of New York v. Woodruff*, 39 App. Div. 123, *In re Whittemore*, which was affirmed in 159 New York, 536, on the opinion of the court below, it was held that under section 86 aforesaid, the city of New York was not entitled, as a matter of legal right, to require the Commissioners of the Land office to insert certain conditions in a grant to a riparian proprietor of lands under water within the State of New York, which conditions were recommended by the Board of Docks. The question as to whether, if the Board of Docks took no action upon the application, either to condemn or recommend it, the commissioners could, under their general powers, make a grant to a riparian owner, did not come before the court and was not decided in that proceeding.

But in the case of *People ex rel. City of New York v. Woodruff*, 166 N. Y. 453, affirming 57 App. Div. 273, (*The Astoria, Light, Heat & Power Co. case*), it was distinctly held that the Commissioners of the Land Office have power to make a grant to a riparian owner of land under water within the city limits under section 86 of the New York Charter, notwithstanding the protest of the Board of Docks; that the Board of Docks has no power to determine that the grant shall issue or even to recommend that no grant shall issue and that its functions are purely advisory; that upon notice of the application by the riparian owner, the duty of the Board of Docks is confined to examining into it and reporting to the Commissioners of the Land Office the conclusions which led it to determine that the issuing of the grant will conflict with the rights and public interests of the city, or that render necessary the insertion in the grant, if issued, of certain terms and conditions which will protect the public interests of the city in respect to navigation, and that while the Commissioners are bound to give careful consideration the conclusions and recommendations of the Board of Docks, the ultimate determination as to whether the grant shall issue and if issued, the terms and conditions thereof rests with the Commissioners of the Land Office and not with the Board of Docks. The court distinctly held that there was no in-

tention by the Legislature in passing the Greater New York Charter to deprive the Commissioners of the Land Office of the power to make grants of land under water to riparian owners in the city of New York, either with or without the consent of the Board of Docks. And the court stated that it was obvious from the closing sentence of section 86 that it was within the contemplation of the Legislature that grants would be made by the Commissioners of the Land Office which would be disapproved by the Board of Docks and therefore the remedy of invoking judicial determination as to the validity of any such grants, was given to the city. The court distinctly repudiated that construction of section 86 of the charter as contended for by the corporation counsel and stated that such construction would strip the Commissioners of the Land Office of all judicial powers as to lands under water in the city of New York and reduce them to mere ministerial officers to execute the expressed will of the Board of Docks.

Section 831 of the charter should be read in connection with sections 83 to 86. Taken together, all of these sections provide for the protection of private riparian rights of owners of uplands adjacent to lands under water in the city of New York, and in my opinion your Honorable Board has authority to grant to the city of New York such lands under water as lie within the boundaries of the projected streets and also such other lands under water between street intersections as may be certified by the Board of Docks as necessary for the construction of wharves, docks, piers, bulkheads, basins and slips after a projection of plans for their construction is made by the Board of Docks with the approval of the Commissioners of the Sinking Fund of said city and then only after the compliance by the City of New York with the rules of the Commissioners of the Land Office governing applications for grants of land under water. These rules provide among other things, for publication of notices of application which will thus afford riparian owners an opportunity to be heard. In the present case this has not been done.

The present application by the Commissioner of Docks and Ferries fails to show that any part of the lands applied for were deemed necessary for the construction of wharves, docks, etc., or is required for projected streets and also fails to show any plans

for dock construction approved by the Commissioners of the Sinking Fund, and I would recommend that the application be denied.

It is my further opinion that the Commissioners of the Land Office are fully authorized to make grants of land under water to riparian owners after reasonable notice to the Board of Docks, even though said Board of Docks should withhold their reports contemplated by section 86 of the charter, and without resorting to mandamus to compel such reports.

Respectfully submitted,

WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *August 19, 1907.*

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of LOUIS
A. HEINSHEIMER for a grant of land
under the waters of Jamaica Bay at
Bayswater, Far Rockaway, Queens
County, New York, for restricted bene-
ficial enjoyment.

To the Commissioners of the Land Office:

Gentlemen.—This application is made by Louis A. Heinsheimer, who is the grantee under a deed made by Louis Bossert and wife, dated October 12, 1905 and recorded October 13, 1905 in Queens County clerk' office in Liber 1392 of Deeds, p. 266, conveying the whole of the uplands referred to in the application of Louis Bossert to your Honorable Board for a grant of 13.81 acres adjacent to said uplands and which grant was ordered issued to said Bossert by your Honorable Board, on March 30, 1905. It appears that Bossert did not accept the grant so ordered made to him and that no letters-patent were issued to him, the reason therefor being that he was negotiating the sale of the up-

lands to Mr. Heinsheimer. The latter now desires that a grant be made of only a portion of the lands under water applied for by Mr. Bossert, viz., a tract of 3.97 acres, as described in Mr. Heinsheimer's application and as shown on Map B.

I would recommend that the matter be referred to the State Comptroller for reappraisal of the limited area now applied for and that the matter take the usual course of uncontested applications.

Respectfully submitted,
WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE.

ALBANY, *September 26, 1907.*

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of CORA
FEHLING for a release to her of the in-
terest of the People of the State of New
York in certain lands in the county of
Queens, which escheated to the State
upon the death of Martin N. Connolly,
without heirs.

To the Commissioners of the Land Office:

Gentlemen.—The above entitled application having been referred to me for my examination, I have the honor to report as follows:

That Martin N. Connolly died intestate at Long Island City on June 5, 1895, leaving him surviving his widow, the petitioner, (who was subsequently remarried) and no heirs at law. At the time of his death he was seized in fee of lots 482 to 485 in block 140, shown on a map of lands belonging to William Ziegler, situated at Corona, Newtown, Queens county, located on Jackson avenue, consisting of a plot eighty feet by one hundred.

In April 1906, the applicant commenced a suit in the Queens county court against the people and the unknown heirs of her deceased husband for the admeasurement of her dower in these premises. In this case I appeared for the people and the action resulted in a decision by the county judge upon a trial held March 23, 1907, that the plaintiff and Martin N. Connolly, deceased, were married in the year 1870, that he died intestate seized of said premises without leaving heirs, and that the plaintiff was entitled to dower in said premises and also that the remainder of said premises escheated to the State. An interlocutory judgment was made May 11, 1907, decreeing the sale of said premises. Said premises were sold under said decree to the petitioner for four hundred and fifty dollars, that being the highest sum bid.

The petitioner shows the value of the entire premises as about three thousand dollars and the widow's dower right therein is about four hundred dollars. The petitioner alleges that the said property was purchased in 1892 for six hundred dollars, and title taken in the name of her deceased husband although said consideration was money saved and accumulated by both her and her husband.

The notice of application was duly advertised, pursuant to statute and affidavits of disinterested persons are presented, in conformity with the rules of your Honorable Board. An abstract of title is presented with the application. There are certain arrears of taxes upon said premises, as shown on the tax search accompanying the abstract.

The public Lands Law provides that where a petitioner is the widow of an owner of lands immediately prior to the escheat, a release by the State shall be made without consideration, if the Commissioners in their discretion deem it just to all parties interested that such a conveyance issue. It appears that the petitioner is the only person having or claiming an interest in the said property, except for unpaid taxes on said property.

This application is made in conformity with the statutes and rules and regulations of your Honorable Board.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 11, 1907.*

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of
PETER WINCHESTER ROUSS, for a
grant of land under the waters of Long
Island Sound, at Bayville, Oyster Bay,
in the County of Nassau, for restricted
beneficial enjoyment.

In the Matter of the Application of
FLORENCE W. RAINFORTH, for a grant
of land under the waters of Long Island
Sound, at Bayville, Nassau County,
for restricted beneficial enjoyment.

The above-entitled applications having been referred to the standing committee by your Honorable Board, we, the undersigned, have the honor to report that we have examined the property described in the above applications, and we find that, in front of these several uplands, owned by the applicants, is a strip of land under water between high and low water mark, which has been used from time immemorial by the general public for walking to and from their places of business, for bathing purposes, and also for gathering shellfish, and your committee thinks that it is not for the best interests of the State that these grants should be made, and recommends that the Board, in its discretion, deny the applications.

If either of these applicants wish to erect a pier in front of their upland, they have a perfect right to do so, without a grant from the Land Board, under the decision of the case of the

People v. Mould, 37 App. Div. 35, and the recent case of the Trustees of Brookhaven v. Smith, 188 N. Y. 74.

The committee thinks that this is the only privilege that these applicants ought to have at the present time.

Respectfully submitted,

JULIUS HAUSER,

State Treasurer.

FREDERICK SKENE,

State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *October 16, 1907.*

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of
GEORGE W. MARTIN and others for a
confirmatory grant of lands under
waters of Otto Creek Bay and the St.
Lawrence river at Alexandria bay,
Jefferson county.

To the Commissioners of the Land Office:

Gentlemen.—This is an application to correct an error in letters patent issued to George W. Martin and others, dated April 11, 1905, recorded Book 54 of Patents, page 56. The error was caused by the applicant's surveyor in describing the applicant's uplands as extending beyond the original mean shore line and including lands which had been filled in, so that the original grant did not include such filled in lands, which, according to the affidavit of S. G. Pope, surveyor, was of an aggregate of 11,250 square feet. The lands patented were appraised at \$75 and were supposed to contain about two-sevenths of an acre. Subsequently the patentee discovered that his patent did not include the filled-

in strip between his original uplands and the lands granted and he presented this application for a confirmatory grant. Upon his attention being called to the fact that the Commissioners of the Land Office were misled by the original map, and that he should pay the State for the lands between the old and present shore line he desired to discontinue this application, but was informed by me that the matter was before your Honorable Board and that I could not act except under your express direction in returning him his old patent and his application for the confirmatory grant. He is now willing to pay the State for the strip of land which was inadvertently omitted from the former patent.

Section 10 of the Public Lands Law authorized your Honorable Board to issue a confirmatory grant in all cases where the necessary jurisdictional facts existed to authorize the grant, and by reason of accidental omission or manifest error the description in the patent was erroneous. The applicant was the proprietor of the adjacent uplands and I think his published notice of application was substantially in accordance with the provisions of section 71 of the Public Lands Law, notwithstanding the error in the description. In addition to the description of the lands which he applied for, he also described his uplands, including therein the filled-in strip.

It is, therefore, my opinion that your Honorable Board have the necessary power to make the confirmatory grant upon the surrender of the old grant and upon the payment into the State treasury of an additional sum of money representing the appraisal value of the strip of filled-in land.

Respectfully submitted,

WILLIAM S. JACKSON,

Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, October 18, 1907.

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of
JOHN A. PAINE for permission to
work a garnet mine in Warren county
on lands of the State in Warren
county.

To the Commissioners of the Land Office:

Gentlemen.—The above-entitled application having been referred to me on July 15th, for my examination and report, I have the honor to submit the following:

This is an application for permission to work a garnet mine on lots Nos. 31, 32, 33, 34, 39 and 40 in Township 11, Totten and Crossfield's Purchase, in the town of Johnsburg, Warren county. The lands described in the application are wild lands within the forest preserve.

I requested a report from the Forest, Fish and Game Commissioner regarding this application, and have their reply in which they state that the said lots belong to the State and are a part of the forest preserve, and they call attention to the fact that the provisions of the Public Lands Law, under which the petitioner seeks to enter on lands of the forest preserve for the purpose of working a mine discovered by him, was enacted prior to the passage of section 7 of the State Constitution, which provides that the forest preserve should be forever kept as wild forest land, and the Forest, Fish and Game Commission claim that the constitutional provisions abrogate and nullify the provisions of the Public Lands Law in so far as entry upon lands within the Forest Preserve to work mines is concerned, and that a grant of the privileges sought by this applicant would be in violation of the letter and spirit of the constitutional provision above referred to.

A similar application to this was made to your Honorable Board

in 1903, and in that case my predecessor, Hon. John Cunneen, expressed his opinion that the working of a garnet mine in the forest preserve would be contrary to the spirit, as well as to the letter of the Constitution and that he could not advise that your Honorable Board had the right or power to grant a license to the applicants. (See Land Office Minutes for 1903, p. 193.)

I agree with the opinion of my predecessor, and would recommend that the application be denied.

Yours respectfully,

WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 9, 1907.*

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of
MARGARETHA ANSAY for the release to
her of certain lots escheated to the
State by reason of failure of heirs of
Hyronimus Wagner, deceased.

To the Commissioners of the Land Office:

Gentlemen.—The above-entitled matter having been referred to me for my examination and report, I beg to submit the following:

On September 26th, the above-named applicant filed a petition with your Honorable Board for the release to her of the State's interest in and to a certain lot of land on the west side of Johnson street in the city of Buffalo, being a lot 25 feet front and rear by 141 feet deep, as described in the petition.

Subsequently the said applicant filed proof of due publication and posting of her notice of this application together with the affidavits of three disinterested persons (one of them being a real estate agent), and also an abstract of her title.

Both the petition and affidavits show that one Hyronimus Wagner died January 3, 1878, leaving his last will and testament wherein he devised all of his property to St. Ann's Church of Buffalo (Catholic). This decedent left no widow or heirs at law.

The Attorney-General having been duly cited to attend the probate of said will, was represented before the surrogate by counsel and the will duly probated. This decedent left no other real estate.

St. Ann's Church was not incorporated at the time of the death of the testator and has not since been incorporated, so that said church at the death of the testator was incapable of taking this devise. The real estate, therefore, is escheated to the State.

On October 29, 1879, St. Ann's Church attempted to convey said premises to John Maurer and on March 23, 1898, John Maurer and wife conveyed said property to Mary Maurer. On December 6, 1906, Mary Maurer conveyed the said premises to Margaretha Ansay.

At the time of the attempted devise of the church, the said property was of the value of \$200. Since then Maurer erected a substantial dwelling house on said lot and the said property is now of the value of about \$2,000. The State has never attempted to obtain possession.

The petition further shows that St. Ann's Church and its grantees have been in undisputed possession of said premises ever since the decease of said Wagner.

The deed made by the church to John Maurer purports to be a deed by a corporation and what purports to be the corporate seal of church is attached hereto and the deed was signed by persons purporting to be the president and secretary of said church and was proved as a corporate deed.

The petitioner states that at the time of her purchase she believed her grantor had a good and perfect title and did not learn to the contrary until March 1, 1907, when she discovered the fact that said church had never been incorporated.

Subdivision 3 of section 60 of the Public Lands Law as amended by chapter 613 of the Laws of 1907, authorizes the presenting of a petition for release to your Honorable Board by the

alleged grantee of any person or of any association or body whether incorporated or not who or which would have succeeded by devise or otherwise to the title of such person but for a legal incapacity to take or convey the property so escheated.

Section 62 of the Public Lands Law, as amended by said chapter 613, Laws of 1907, provides that the conveyance so made to any such petitioner being the grantee of any unincorporated association or body, shall be without consideration where the value of the property sought to be released shall not exceed \$10,000.00.

The petition is presented in accordance with the provisions of the statutes and the rules and regulations of your Honorable Board, and it is my opinion that your Honorable Board have power to release the said premises to said petitioner without consideration.

Respectfully submitted,

WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 10, 1907.*

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of
CHARLES E. REMICH and MATTIE C.
REMICH for Letters Patent of Lot 13
and part of Lot 12 of Oneida Purchase
of 1826, Madison county.

To the Commissioners of the Land Office:

Gentlemen.—The amended petition and other papers herein, together with the records of the State Engineer's and State Comptroller's offices, and also the original Surveyor-General's and State Engineer's certificates submitted by the applicant, show that Lot No. 13 of the Oneida purchase of 1826, containing 78.03 acres, was sold by the Surveyor-General to Gardiner Avery on August

17, 1826, for \$620.00, of which \$180.00 was paid at the time of the sale and Avery executed his bonds to the State for the remainder of \$440.00.

On December 7, 1859, the State Engineer and Surveyor sold to Lyman Goff 50.36 acres, part of Lot 12 of the Oneida purchase of 1826, for \$527.84, upon which was paid \$132.00, leaving \$395.84 for which said Goff executed a bond to the State.

Both of the above certificates of sale passed by assignment to the petitioners in the year 1895, although the petitioner Mattie C. Remich is the real person in interest.

On July 27, 1898, a balance of \$383.43 was due the State on the Avery bond and \$553.01 on the Goff bond for balance of principal and interest thereon, and it having been erroneously assumed that the said premises were situated in Oneida county and within the forest preserve, they were ordered resold by the Land Board on February 23, 1899, and were resold on June 8, 1899, by the State Engineer and Surveyor, who bid them in for the State after notice was published in a paper printed in Oneida county. The lands in question were at the time of said sale and are still in Madison county, and no notice of sale was ever published in that county. The notice published in Oneida county stated that the State Engineer and Surveyor would bid in for the State the lands in question, which were in said notice described as being situated in Oneida county and within the forest preserve, and that he would reject any and all bids of others for said land under section 7 of article 7 of the Constitution prohibiting sales of land in the forest preserve.

I agree with my predecessor, Julius M. Mayer, in his report to the Land Board of October 10, 1906, in the matter of application of Daniel A. Taft for letters-patent to lands in Madison county which were resold to the State in 1899 under similar facts (see Land Office minutes, 1906, page 198), that said resales were illegal and void.

An abstract of title submitted by the applicant shows that Charles E. Remich is owner of record of said lands but that his wife, Mattie C. Remich, is the equitable owner thereof.

I would therefore recommend that the resales to the State be formally set aside and that letters-patent be issued to the peti-

tioners upon their presenting to your Honorable Board the receipts of the State Treasurer in full of payment of the principal and interest upon the said bonds of Goff and Avery, together with any other liens which may have been charged against said lands upon the books of the State Comptroller and for which said lands were attempted to be resold on June 8, 1899, with interest to date.

Respectfully submitted,
WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK,
ATTORNEY-GENERAL'S OFFICE,
ALBANY, *December 11, 1907.*

BEFORE THE COMMISSIONERS OF THE LAND OFFICE.

In the Matter of the Application of Mrs.
JOHANNA SALMON for the advertise-
ment and sale of Fine Salt Lot No.
92, Onondaga Salt Springs Reserva-
tion.

To the Commissioners of the Land Office:

Gentlemen.—The petition of Johanna Salmon shows that on June 11, 1860, Fine Salt Lot No. 92 of the Onondaga Salt Springs Reservation was leased to James Spencer for a term expiring June 29, 1889 and that said lease was duly assigned to the petitioner on September 10, 1886.

The petitioner and her grantors manufactured salt upon said premises during their tenancy, but the same have now become totally unproductive of income and the salt works thereon have been gradually destroyed and removed.

The petitioner has paid all taxes and water rents against said premises to the present time and now offers to bid \$400.00 for said lot at public auction.

The records of the Secretary of State's office show that Fine Salt Lot 92 has never been sold. I therefore return this petition with my opinion that your Honorable Board has full power to sell and dispose of same at public auction, and would recommend that the same be appraised for the purpose of determining the advisability of a sale at this time.

Respectfully submitted,

WILLIAM S. JACKSON,
Attorney-General.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 18, 1907.*

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Applications of
SUSAN S. WINANS *et al.* and also of B.
A. & G. N. WILLIAMS, for grants of
land under the waters of the East river
at Long Island City, Queens county,
for beneficial enjoyment.

To the Commissioners of the Land Office:

Gentlemen.—The above entitled application having been referred to your Committee, together with the remonstrances thereto of the Corporation Counsel of the city of New York, we have the honor to report that these matters came regularly on for hearing before your Committee on October 4th last. The attorneys for the applicants attended but there was no appearance on behalf of the remonstrants. A letter, however, was received from the Corporation Counsel, dated September 30, 1907, acknowledging service of notice of hearing and requesting that the appearance of the Corporation Counsel be noted and that the usual action

be taken with regard to said application, and that in case the application should be granted, that the usual covenants contained in grants of land in Greater New York be inserted in any letters-patent that may be issued.

The remonstrances of the city of New York were based upon the sole ground that the city claims title to the lands under water applied under colonial patents. This contention of the city having been uniformly overruled by your Honorable Board, we are of the opinion that these applications should take the usual course of uncontested applications.

Respectfully submitted,

JULIUS HAUSER,

State Treasurer.

FREDERICK SKENE,

State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, *December 18, 1907.*

BEFORE THE STANDING COMMITTEE OF THE COMMISSIONERS OF
THE LAND OFFICE FOR THE HEARING OF REMONSTRANCES.

In the Matter of the Application of JOHN
WESTERVELT BOGERT for a grant of
land under the waters of the Hudson
river in the village of Nyack, Rockland
county, for beneficial enjoyment.

To the Commissioners of the Land Office:

Gentlemen.—The above entitled application having been referred to us by your Honorable Board, we have the honor to report that a hearing was had by your Committee on May 7, 1907, at which the applicant and the remonstrants were duly heard.

After due deliberation, we are of the opinion that the remonstrances herein should be overruled, but in view of the fact that the applicant has amended his application by stating that it is his intention to appropriate the lands applied to his beneficial enjoyment by erecting thereon a dock and other structures extending into the Hudson river for not more than 325 feet until the shallowing of the water makes it necessary to extend it further in order to get required depth of water, we are of the opinion that the area of the grant should be restricted so that the parcel of land under water which may be granted shall extend out only 325 feet from original high water mark on each side, instead of 500 feet as applied for.

Respectfully submitted,

JULIUS HAUSER,
State Treasurer.

FREDERICK SKENE,
State Engineer and Surveyor.

STATE OF NEW YORK,

ATTORNEY-GENERAL'S OFFICE,

ALBANY, December 23, 1907.

*To the Honorable, The Commissioners of the Land Office, Albany,
N. Y.:*

Gentlemen.—Replying to your request of the 20th instant for advice as to your power to designate a member of your Board to subscribe letters-patent:

Letters-patent have heretofore been subscribed by the Governor, but he now has expressed a desire to be relieved of that work.

The Constitution of 1846, article V, section 5, provided:

“The lieutenant-governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor shall be the commissioners of the land office * * * .”

That provision has ever since been retained. The present Constitution, as adopted January 1, 1895, provided, article V, section 6:

“The powers and duties of the respective boards and of the several officers in this article mentioned shall be such as now are or hereafter may be prescribed by law.”

The Public Lands Law, enacted by chapter 317 of the Laws of 1894, and in force when the present Constitution was adopted, specifically creates various powers and duties in the Land Board to make grants and execute patents, without any express limitation that the exercise of those powers shall be subject to the approval of the Governor.

Section 4 of that act provides:

“All letters-patent shall be in such form as the commissioners direct * * * .”

It thus appears that the Governor is not a member of the Board and is not charged with the duty of subscribing letters-patent. The forms heretofore used for letters-patent have been adapted to subscription by the Governor.

In the year 1803 the Governor was a member of the Land Board, and by chapter 88 of the laws of that year, approved April 5th, it was provided as follows:

“ * * * In case of the absence of the person administering the government of this State at any meeting of the said commissioners, they shall at any meeting of the said commissioners appoint a chairman to preside at such meeting, provided always

That the consent and approbation of the person administering the government of this state shall be and hereby is declared to be necessary to the validity of every act and proceeding of the said land office.”

Chapter XI of the Laws of 1814, approved October 21st, section V (page 10), provided:

“That it shall not hereafter be necessary for the person administering the government of this state to attend any

meeting of the commissioners of the land office, and in all meetings hereafter to be had the officer first named in the act hereby amended and attending shall preside as chairman."

The records of the Board show that since 1814 the minutes have not borne the formal approval of the Governor theretofore customary if the acts of the Board met with his approval.

It is undoubtedly within the power of the Commissioners of the Land Office at this time to change the forms of letters-patent and to authorize one of their number to execute or subscribe the same. In view of the absolute nature of the power given to the Board by existing statutes to make grants and issue letters-patent, the consent or approval of the Governor is no longer required to give validity to such acts, and the act of 1803, above quoted, must be deemed repealed by implication.

Yours truly,

WILLIAM S. JACKSON,

Attorney-General.

GENERAL INDEX.

Actions:	PAGE.
against banks and trust companies.....	22, 150-171
agricultural and pure food laws, violation of.....	202-223
amend certificates of incorporation.....	187
change name of corporations.....	187
dissolving corporations prior to January 1, 1907.....	150-167
dissolving corporations subsequent to January 1, 1907.....	167-171
foreclosure	181-185
in the name of the people, applications to commence.....	237-261
involving tax laws	12-15, 61, 100-149
miscellaneous	188-200
partition	185-186
sequestration	176-181
voluntary dissolution	172-175
 Agricultural Department	 19, 202-223
cases discontinued	202, 220-223
cases on appeal, disposed of	219
cases in Appellate Division	220
cases in Court of Appeals.....	220
finer imposed in criminal actions brought by New York City Bureau..	218
judgment for defendants	202, 204-205
judgments which have been paid in full.....	217
penalties and costs collected during 1907.....	202, 206-218
services and disbursements, amount paid attorneys for.....	202
uncollected judgments in favor of State.....	202-204
Abearn, John F., In re.....	38
Alexandria bay, application for grants of land under waters at....	602, 625
American Ice Company	47
American Telephone and Telegraph Company.....	48
American Underwriters' Fire Insurance Company of Monroe County, ap- plication of Speed et al. against.....	244
Ansay, Margaretha, application of, for release of escheated lands in Buffalo	628
 Anti-Trust Investigations and Litigations.....	 7, 47
 Appellate Division:	
agricultural cases on appeal in.....	220
cases argued in	62
Court of Claims, cases on appeal in.....	69-81
tax cases pending in	147-149

Applications:	PAGE.
dissolution of corporations	237-261
grants of land under water	601-637
letter-patent	613, 635
referred to Attorney-General by Commissioners of Land Office, reports on	601-637
release of escheated lands	622, 628, 630
Applications to commence actions in the name of the People.....	237-261
Cook, Fred W., application of against Tompkins County Co-opera- tive Fire Insurance Company.....	245
DeLancey, Edward E., and one, for leave to bring an action under sec- tion 1757 of the Code to vacate and annul certain letters-patent...	238
Deister, John H., application of, to test title to office of county treasurer of Chemung county	237
Peters, Daniel S., application of, to remove directors of Monarch Coated Paper Company	255
Roberts, Watson E., application of, to decide title to office of recorder of city of Binghamton	241
Speed, R. G. H., et al., application of, against American Underwriters' Fire Insurance Company of Monroe County	244
Speed, R. G. H., et al., application of, against Northwestern Mutual Fire Insurance Company of Onondaga County	249
Utley, William L., application of, to commence an action against John N. Briggs and Stephen W. Mosher	256
Apportionment cases	53-54
Attorney-General:	
applications heard by, to commence actions in name of People....	237-261
application of, against Consolidated Gas Company	40
application of, against Interborough Metropolitan Company.....	44
application of, against Western Union Telegraph Company and Postal Telegraph Cable Company	51-52
constitutional powers of	54
Bank of Staten Island	154
Banks:	
Bank of Staten Island	154
Borough Bank of Brooklyn	22, 171
Brooklyn Bank	22, 170
Cooper Exchange Bank	166
Federal Bank of New York	153
German Bank	159
Hamilton Bank	22, 169

Banks — Continued:

	PAGE.
Holland Trust Company	156
International Trust Company	22, 170
Jenkins Trust Company	22, 171
Knickerbocker Trust Company	22, 168
Metropolitan Bank	162
State Bank of Forestville	155
State Bank of Ovid	155
Terminal Bank	23
Twelfth Ward Bank	23
United States Exchange Bank	23
Williamsburg Trust Company	22, 169

Barge Canal:

judgments in Court of Claims cases in 1907	95
Law, operation of	18
Binghamton, recorder of, application to test office of	241
Bogert, John Westervelt, application of, for grant of land under waters of Hudson river at Nyack	634
Bonds examined and passed upon	61
Borough Bank of Brooklyn	22, 171
Briggs, John N., and one, application of Utlely to commence action against	256
Brooklyn Bank	22, 170
Brooklyn, borough of, applications for grant of land under waters in	608
Broome county, proceedings against county officers of	11

Canals:

barge canal titles, etc.	18-19
barge canal claims	18
claims arising under	17
real estate, examination of titles to	18-19
Canandaigua Waterworks Company et al.	150
Cases argued, 1907	62

Cases undecided:

Agricultural Law	220
Court of Claims	65-81
tax cases	147-149

Certificates of incorporation:

application to amend	187
examined	61, 201
Chemung county, application to test title to office of county treasurer of	237
Civil service litigation	229

Claims. (See Court of Claims.)

Clerks, list of, in office	5
Cline, James, application of, for grant of land under waters of St. Lawrence river at Alexandria Bay	602

	PAGE.
Clinton county, violation of Liquor Tax Law in.....	10
Clough, Aaron and Walter H. Fox, application of, for lease of certain farm lands in Oneida county.....	612
Coeymans, lighting companies of, in re	256
Commissioners of the Land Office.....	601-637
power of, to designate a person to sign letters-patent.....	635
reports and opinions rendered by the Attorney-General.....	601-637
Commissioners of the Land Office— Reports of standing committee for the hearing of remonstrances	601-637
Bogert, John Westervelt, for grant of lands under waters of Hudson river at Nyack.....	634
Cline, James, for grant of land under waters of St. Lawrence river at Alexandria Bay	602
Gilfeather, Jane, for grant of land under waters of Gravesend bay at Coney Island, borough of Brooklyn.....	608
Kellogg, George C., and John F. O'Brien, for grant of land under waters of Lake Champlain at Plattsburgh.....	607
Letters-patent, power of commissioners to designate a person to sub-scribe	635
Maxwell, J. Rogers, for grant of land under waters of Long Island sound at Glencove, Nassau county.....	610
O'Brien, John F., and George C. Kellogg, for grant of land under waters of Lake Champlain at Plattsburgh.....	607
Rainforth, Florence W., for grant of land under waters of Long Island sound at Bayville, Nassau county.....	624
Reynolds, Charles M., for grant of land under waters of East river, Borough of Queens	603
Rouss, Peter W., for grant of land under waters of Long Island sound at Bayville, Nassau county	624
Shaw, Samuel T., for grant of land under waters of Long Island sound, Center Island, Nassau county.....	609
Wainwright, John, for grant of land under waters of Jamaica bay, Queens county	604
Williams, B. A., and G. N., for grant of land under waters of East river, Long Island City, Queens county.....	633
Winans, Susan S., et al., for grant of land under waters of East river at Long Island City, Queens county.....	633
Commissioners of the Land Office— Reports on applications referred to the Attorney-General	601-637
Ansay, Margaretha, for release of certain escheated lands re estate of Hyronimus Wagner, deceased.....	628
Bensel, John A., commissioner of docks and ferries, New York city, re grant of all unpatented lands in New York city.....	616
Fehling, Cora, for release of certain escheated lands in Queens county	622
Fox, Walter H., and Aaron Clough, for lease of certain farm lands in town of Florence, Oneida county, acquired by State on foreclosure of Loan Commissioners' mortgage.....	612

Commissioners of the Land Office—Continued:	PAGE.
Gates, Leroy H., for an extension of time in which to comply with letters-patent	613
Heinsheimer, Louis A., for grant of land under waters of Jamaica bay at Bayswater, Queens county	621
Martin, George W., et al., for a confirmatory grant of land under waters of Otter creek bay, St. Lawrence river, Alexandria Bay	625
Paine, John A., for permission to work garnet mine in Warren county on State land	627
Remich, Charles E., and Mattie C., for letters-patent to Lot 13 and part of Lot 12, Oneida Purchase of 1826, Madison county	630
Salmon, Johanna, for advertisement and sale of Fine Salt Lot 92, Onondaga Salt Springs Reservation	632
Sommerville, Agnes, for a confirmatory grant of certain lands in Kings county	615
Wright, Edward C., for advertisement and sale of certain unappropriated State lands	601
Consolidated Gas Company of New York	38, 40
Cook, Fred W., application of, against Tompkins County Co-operative Fire Insurance Company	245
Cooper Exchange Bank	166
Co-operative fire insurance companies	58
Cooperstown & Mohawk Valley Railroad Company	163

Corporations—Dissolved by action of Attorney-General prior to January 1, 1907	150-167
Bank of Staten Island	154
Canandaigua Waterworks Company et al.	150
Cooper Exchange Bank	166
Cooperstown & Mohawk Valley Railroad Company	163
Federal Bank of New York	153
German Bank	159
Globe Savings and Loan Association	164
Guardian Savings and Loan Company	161
Holland Trust Company	156
Home Mutual Building and Loan Association	166
Manhattan Fire Insurance Company	168
Manhattan Real Estate and Loan Company	162
Mercantile Credit Guarantee Company of New York	151
Metropolitan Bank	162
Metropolitan Mutual Savings and Loan Association	160
New York Building-Loan Banking Company	157
North America Life Insurance Company	165
North German Fire Insurance Company of New York	156
Oran Co-operative Creamery Company	150
Republic Savings and Loan Association	152
State Bank of Forestville	155
State Bank of Ovid	155
Treasury Corporation Co-operative Savings and Loan Association	161
Troy Chemical Company	163
United Freeman's Land Association No. 2	164

	PAGE.
Corporations—Dissolved by action of Attorney-General subsequent to	
January 1, 1907	167-171
Borough Bank of Brooklyn	171
Brooklyn Bank in the City of New York	170
Hamilton Bank of New York City	169
International Graphophone Company	168
International Trust Company	170
Jenkins Trust Company	171
Knickerbocker Trust Company	168
Moresville Turnpike Company	167
Williamsburg Trust Company	169
Corporations:	
actions to amend certificates of	187
actions to change name of	187
banking, proceedings pending for dissolution of	150-171
certificates of, examined	201
insurance, proceedings pending for the dissolution of	150-171
sequestration actions of	176-181
taxation of	12
voluntary dissolution of	172-175
Costs collected, violation of Agricultural Law	202, 206-218
County officers, proceedings against	11
Court of Appeals:	
agricultural cases on appeal in	220
cases argued in	62
Court of Claims cases on appeal in	65-69
Court of Claims	16, 63-97
amount claimed	61, 64
amount awarded	61, 64
barge canal judgments	95
canal claims	17
cases in Appellate Division	69-81
cases in Court of Appeals	65-69
claims disposed of in 1907	16, 61
claims dismissed	61, 64
claims filed	64
claims pending January 1, 1908	64
judgments rendered during 1907	82
jurisdiction of	17
miscellaneous cases	18, 96
percentage of award to amount claimed	61
Decisions:	
applications to commence actions in name of People	237-261
in tax cases	12-13
Deister, John H., application of, to test title to office of county treasurer	
of Chemung county	237

PAGE.

Delancey, Edward E., and one, application to cancel and annul certain letters-patent	238
Deputies, list of	5

Dissolution of Corporations. (See Corporations.)

Docks and ferries, New York city, application to Commissioners of Land Office for all unpatented lands by department of	616
---	-----

East river, applications for grants of land under waters of	603, 633
Economy Light, Fuel and Power Company of Lockport	51
Election crimes, prosecution of	9, 61

Election Law:

Metropolitan Elections District	9
violation of	9, 61
Employees of office, list of	5
Erie county deputy	5
Escheated lands, applications for release of	622, 628, 630
Examination of certificates of incorporation	61, 201
Executive requirements, prosecution of proceedings under	10

Federal Bank of New York	153
Fehling, Cora, application of, for release of escheated lands in county of Queens	633
Foreclosure actions	19, 61, 181-185
Forest Preserve	8
Fox, Walter H., and Aaron Clough, application of, for lease of certain farm lands in Oneida county	612
Franchises, actions to annul	40, 43, 44, 52

Garnet mines, application to work	627
Gas litigation	38, 40-42
Gates, Leroy H., application of, for extension of time in which to comply with letters-patent	613
German Bank of Buffalo	11, 159
Gilfeather, Jane, application of, for grant of land under waters of Gravesend bay, borough of Brooklyn	608
Globe Savings and Loan Association	164
Governor, prosecution of actions under his requirement	10
Gravesend bay, application for grant of land under waters of	608
Guardian Savings and Loan Company	161

	PAGE.
Hamilton Bank of New York City	22, 169
Hearings	21, 61
Hearst, William Randolph, application of, to test title of George B. McClellan as mayor of New York city	32
Heinsheimer, Louis A., application for grant of land under waters of Jamaica bay, Queens county.....	621
Holland Trust Company	156
Home Mutual Building and Loan Association	166
Hotchkiss, Albert, Re, testing of title to office of recorder of Binghamton..	241
Hudson river, applications for grants of land under waters of.....	634

Insurance:

premiums, taxation of	12
town and county co-operative fire insurance companies	58
Interborough Metropolitan Company, application of Attorney-General against	44
International Graphophone Company	168
International Trust Company	22, 170
Investigations, Anti-Trust	7

Jamaica bay, applications for grants of land under waters of.	604, 621
Jenkins Trust Company	22, 171

Judgments:

agricultural cases	202-205, 217
Court of Claims cases	82-96
barge canal	95
other than canal	96

Kellogg, George C., and John F. O'Brien, application of, for grant of land under waters of Lake Champlain at Plattsburg ...	607
Kings county, application for confirmatory grant of lands in.....	615
Kissena park, investigation in re purchase of.....	11
Knickerbocker Trust	22, 168

Lake Champlain, application for grant of land under waters of	607
---	-----

Land Department:	PAGE.
applications for grants of land under water.....	18, 61, 601-637
titles	18

Land Office. (See Commissioners of Land Office.)

Lands:	
application to acquire title to.....	601-637
escheated to State, applications for release of.....	622, 628, 630
sale of unappropriated State lands.....	601
under water, applications for grants of.....	601-637

Letters-patent:	
applicants for	613
power of Commissioners of Land Office to designate a person to sign..	635
Liens against the State	60
Life insurance companies, taxation of premiums of	12

Litigation:	
anti-trust	7, 47-48
agricultural and pure food	202-223
gas	38, 40-42
tax	12, 13
tax, special franchise	100-147
Lockport Light, Heat and Power Company	50
Long Island sound, applications for grants of land under waters of.....	609
	610, 624

McClellan, George B., mayor of city of New York, Re, testing title of office	32
---	----

Madison county, application for letters-patent in	630
Mamaroneck harbor, cancel letters-patent to lands in.....	238
Manhattan Fire Insurance Company	158
Manhattan Real Estate and Loan Company	162
Martin, George W., et al., for confirmatory grant of land under waters of Otter creek bay at Alexandria Bay.....	625
Maxwell, J. Rogers, application of, for grant of land under waters of Long Island sound, at Glen Cove, Nassau county.....	610
Mayor of city of New York, action to test title of office of.....	32
Mercantile Credit Guarantee Company of New York	151
Metropolitan Bank	162
Metropolitan Elections District, In re.....	9
Metropolitan Mutual Savings and Loan Association of Buffalo.....	160
Metropolitan Street Railway Company, In re	43

	PAGE.
Miscellaneous actions and proceedings	53, 188-200
Monarch Coated Paper Company, application of Peters to remove directors of	255
Moneys collected	60, 202, 206, 218
Moresville Turnpike Company	167
Mortgage foreclosure suits	61
Mortgage Tax Law, litigation in re	13
Mosher, Stephen W., and one, application of Utley to commence action against	256
Nassau county, applications for grants of land under water in ..	609, 610, 624
Newman Lumber Company v. Wemple et al.	60
New York Building-Loan Banking Company	157
New York Central & Hudson River Railroad Company, investigation of accident on Harlem branch of, at Woodlawn	232
New York city, department of docks and ferries, application of, to Commissioners of Land Office for all unpatented lands.	616
New York City Railway Company	43
New York Office:	
agricultural cases disposed of by	204-218, 221-223
employees of	5
report of deputy in charge of	21, 223-233
New York, Ontario & Western Railway Company	57
North America Life Insurance Company	165
North German Fire Insurance Company of New York.	156
Northwestern Mutual Fire Insurance Company of Onondaga County, application of Speed et al. against	249
Nyack, application for grant of land under waters of Hudson river at....	634
O'Brien, John F., and George C. Kellogg, application of, for grant of land under waters of Lake Champlain	607
Oneida county, application for lease of certain farm lands in	612
Onondaga Salt Springs Reservation, application for advertisement and sale of Fine Salt Lot No. 92.	632
Operation of Barge Canal Law	18
Opinions and reports rendered Commissioners of Land Office.	601-637
Opinions rendered State officers, commissions, departments, etc. (See Indices)	21, 61, 235-637
Oran Co-operative Creamery Company	150

PAGE.

Paine, John A., application of, for permission to work a garnet mine in Warren county on State lands	62/
Partition actions	61, 185-186

Penalties and costs collected:

Agricultural Law	60, 202, 206-218
all other moneys	60
People, actions in the name of, decisions in applications to commence	237-261
Peters, Daniel S., application of, to remove directors of Monarch Coated Paper Company	255
Postal Telegraph Cable Company, application of Attorney-General against	51-52

Proceedings:

dissolution, banking corporations	150-171
miscellaneous	188-200
removal, county officers	11
special franchise	15, 61, 100-149
test title to public offices	32, 38
under executive requirement	10

Prosecutions:

Agricultural Law	202-223
Election Law, violation of	9, 61
Public service corporations, litigations relating to	38

Pure Food Law. (See Agricultural Law.)

Queens, borough of, applications for grants of land under water in....	603
	604, 621

Queens county:

applications for grants of land under waters in, and release of es- cheated lands in	603-604-621, 622, 633
Quo warranto	61, 237-261

Railways, street, applications to commence actions to annul corporate franchises of	43-44
Rainforth, Florence W., application of, for grant of land under waters of Long Island sound at Bayville, Queens county	635

Receiverships	22, 150-171
actions instituted in 1907	167-171
actions instituted prior to 1907	150-167
pending January 1, 1907	150-171

	PAGE.
Release escheated lands, applications for	622, 628, 630
Remich, Charles E., and Mattie C., application of, for letters-patent to Lot 13 and part of Lot 12, Oneida Purchase, 1826.....	630
Remonstrances, standing committee for the hearing of. (See Commissioners of the Land Office.)	
Removal county officers, proceedings for.....	11
Reports:	
on applications referred to Attorney-General by the Commissioners of the Land Office	601-637
Republic Savings and Loan Association	152
Reynolds, Charles M., application of, for grant of land under waters of East river, borough of Queens.....	603
Roberts, Watson E., application of, to decide title to office of recorder of city of Binghamton	241
Rcuss, Peter W., application of, for grant of land under waters of Long Island sound at Bayville, Nassau county.....	624
Salmon, Johanna, application of, for advertisement and sale of Fine Salt Lot No. 92, Onondaga Salt Springs Reservation	
Salt lands, application for advertisement and sale of.....	632
Santa Clara Lumber Company	54
Saratoga gas litigation	42
Sequestration actions against corporations	176-181
Shaw, Samuel T., application of, for grant of land under waters of Long Island sound, Center Island, Nassau county.....	609
Sommerville, Agnes, application of, for confirmatory grant of certain lands in Kings county	615
Special Franchise Tax Department	15, 61, 100-147
assessments sustained by referees	144
discontinued during 1907	144
municipalities, intervening of	143-144
proceedings commenced	101-122
proceedings pending	122-127
proceedings settled	136-141
referees, appointment of	141-143
references pending	127-136
references, New York city, condition of.....	144-147
Speed, R. G. H., et al., application of, against American Underwriters' Fire Insurance Company of Monroe County	244
Speed, R. G. H., et al., application of, against Northwestern Mutual Fire Insurance Company of Onondaga County	249

	PAGE.
St. Lawrence river, applications for grants of lands under waters of ..	602, 625
Standing Committee for the Hearing of Remonstrances. (See Commissioners of Land Office.)	
State Bank of Forestville.....	155
State Bank of Ovid	155
State Lands:	
escheated	622, 627, 630
grants under water	601, 637
sale of unappropriated	601
title to	18-19
Statement of moneys collected	60, 202, 206-218
Stree railroads, applications to annul charters of.....	40, 43, 44, 52
Summary of business of office	60
Surrogates' proceedings	19, 61
Syracuse gas litigation	41
Tax cases	12-15, 100-149
insurance premiums, taxation of	12
Mortgage Tax Law	13
pending in Appellate Division	147-149
pending in Court of Appeals.....	147
special franchise	15, 61, 100-147
Terminal Bank	23
Titles to lands, examination of	19, 61
Tompkins County Co-operative Fire Insurance Company, application of Cook against	245
Town and county co-operative fire insurance companies	58
Treasury Corporation Co-operative Savings and Loan Association	161
Troy Chemical Company	163
Trust Companies. (See Banks.)	
Twelfth Ward Bank	23
United Freeman's Land Association No. 2.....	164
United States Exchange Bank.....	23
Utley, William L., application of, to commence an action against John N. Briggs and Stephen W. Mosher	256
Voluntary Dissolutions	172-175

	PAGE.
Wainwright, John, application of, for grant of land under waters of Jamaica bay, Queens county	604
Warren county, application to work garnet mines in.....	627
Water, lands under. (See Lands.)	
Western Union Telegraph Company, application of Attorney-General against	51-52
Williams, B. A., and G. N., application of, for grant of lands under water of East river at Long Island City.....	633
Williamsburg Trust Company	22, 169
Winans, Susan S., et al., application of, for grant of land under waters of East river at Long Island City.....	633
Wintermute, Thomas J., application of John H. Deister to test title to office of, as county treasurer, Chemung county	237
Woodlawn, investigation of accident at, on New York Central & Hudson River railroad, Harlem branch	232
Wright, Edward C., application of, for advertisement and sale of unappro- priated State lands	601

General Reference to Opinions Rendered State Officers, Departments, Boards, Commissions, etc., During the Year 1907.

	PAGE.
Governor	262-275
Lieutenant-Governor	276
Secretary of State	277-293
State Comptroller	293-309
State Engineer and Surveyor.....	309-383
Canal Board	384-392
Commissioners of the Land Office.....	601-637
State Adjutant-General	393-395
State Board of Armory Commissioners	395-403
State Board of Charities	404-409
State Board of Embalming Examiners.....	410-412
State Board of Pharmacy	412-414
State Board of Special Examiners and Appraisers.....	415
State Board of Tax Commissioners.....	416-444
State Civil Service Commission	444-447
State Commission in Lunacy	448-453
State Commissioner of Agriculture	453-460
State Commissioner of Health	461-467
State Superintendent of Banks	468-482
State Superintendent of Elections	482-485
State Superintendent of Insurance	486-539
State Superintendent of Prisons	539-543
State Superintendent of Public Works	543-549
State Water Supply Commission	549
Other than State Departments.....	550-601

Names of Persons and Officials who Received Opinions.

	PAGE.
Adjutant-General	393
Agriculture, Commissioner of	453, 454, 456-480
Armory Commission	395, 401, 403
Assembly, Clerk of	565
Banks, State Superintendent of	468, 470, 471, 473, 475, 477, 479-481
Baxter, A. E., Clerk of the Assembly	565
Birdseye, John C., Secretary State Civil Service Commission	445
Board of Special Examiners and Appraisers	415
Bohrer, Ernest	588
Bradt, Warren L., Secretary State Board of Pharmacy	412
Brennan and Curran	568
Byers, Joseph P., Superintendent House of Refuge, Randall's Island	569
Canal Board	384, 388, 389
Central Federation Union, Secretary of	580
Chanler, Lewis Stuyvesant, Lieutenant-Governor	276
Charities, Secretary State Board of	404, 407
Church, Sanford T.	595
Civil Service Commission, Secretary of	445
Clerk of the Assembly	565
Clerk of Police Department, Rochester	591
Clute, Jacob W.	564
Collins, Cornelius V., Superintendent of Prisons	539, 541
Commissioner of Agriculture	453, 454, 456-480
Commissioner of Health	461, 464, 466
Commission in Lunacy	448, 449, 451
Comptroller. (See State Comptroller.)	
Corporation Counsel, City of New York	551
County Clerk, Rensselaer	566
Davis, Katherine C.	592
Division Engineer	371

PERSONS AND OFFICIALS WHO RECEIVED OPINIONS. 655

	PAGE.
Donaldson, Harvey J., Board Special Examiners and Appraisers.....	415
Doty, Lockwood R.	578

Election, Inspector of, Adams, N. Y.....	594
Elections, State Superintendent of	482
Ellison, William B., Corporation Counsel, New York city.....	551
Embalming Examiners, State Board of.....	410, 411
Examiners and Appraisers, State Board of.....	415

Fanning, Herbert J.	550
Ford, Charles H.	553

Glynn, Henry R., Assembly Chamber.....	557
Glynn, Martin H., Comptroller.....	293, 295, 296, 298, 300, 305-307
Governor, The	262
Graves, John C., State Water Supply Commission.....	549

Hall, Benjamin E., State Board Tax Commissioners.....	437
Harper, William B.	597
Harrison, L. B., Division Engineer.....	371
Health, State Commissioner of.....	461, 464, 466
Henry, Nelson H., Adjutant-General.....	393
Hill, Robert W., Secretary State Board of Charities.....	404, 407
Hill, W. R., Special Deputy State Engineer....	314, 317, 320, 336, 340, 343, 346 348, 350, 368, 375, 377, 379-381
Holmes, G. M.	576
Hooker, S. Percy	573
Hughes, Charles E., Governor State of New York.....	262

Inspector of Election, Adams, N. Y.....	594
Insurance, State Superintendent of..	486, 488, 502, 503, 505, 508, 509, 511 513, 515, 520, 523, 526, 527, 529, 530, 534

Jacobs, J. V., County Clerk, Rensselaer.....	586
--	-----

656 PERSONS AND OFFICIALS WHO RECEIVED OPINIONS.

	PAGE.
Keep, Charles H., Superintendent of Banks.....	468, 470
Kelly, John F.	583
Kelsey, Otto, Superintendent of Insurance....	486, 488, 502, 503, 505, 506, 509 511, 513, 515, 520, 523, 526, 527, 530, 534
Kiendl Brothers	570
Leary, William, Superintendent of Elections.....	482
Lieutenant-Governor	276
Lunacy, State Commission in, Secretary of.....	448, 449, 451
McGarr, T. E., Secretary State Commission in Lunacy.....	448, 449, 451
McNeeley, Frank, Secretary State Board Armory Commissioners.....	401
Mead, Winslow M., Deputy Superintendent Public Works.....	543
Meagher, William C., Clerk Police Department, Rochester.....	591
Pharmacy, Secretary State Board of.....	412, 413
Phillips, William J., Secretary State Board Embalming Examiners..	410, 411
Phippin, W. G.	555
Police Department, Rochester, Clerk of.....	591
Porter, Eugene H., Commissioner of Health.....	461, 464, 466
Prisons, State Superintendent of.....	539, 541
Public Works, State Superintendent of.....	544, 546, 548
Rensselaer County, Clerk of.....	586
Ripley, C. E., Inspector of Election.....	594
Robinson, Herman, Secretary Central Federation Union.....	580
Ryan, J. T.	582
Secretary Central Federated Union	580
Secretary of State	277, 280, 281, 283, 284, 286, 288, 291, 292
Secretary State Board of Armory Commissioners	401
Secretary State Board of Charities	404, 407
Secretary State Board of Embalming Examiners	410, 411
Secretary State Board of Pharmacy	412, 413
Secretary State Civil Service Commission	445
Secretary State Commission in Lunacy	448, 449, 451
Secretary State Water Supply Commission.....	549
Shepardson, Walter A.	567

	PAGE.
Skene, Frederick, State Engineer and Surveyor....	310, 312, 313, 319, 320, 327 352, 373
Skinner, George I., Acting Superintendent of Banks.....	475, 477, 479
Special Deputy State Engineer..	314, 317, 320, 336, 340, 343, 346, 348, 350, 368 375, 377, 379-381
Special Examiners and Appraisers, Board of.....	415
State Adjutant-General	393
State Board of Armory Commissioners	395, 401, 403
State Board of Charities, Secretary of.....	404, 407
State Board of Embalming Examiners	410, 411
State Board of Pharmacy, Secretary of.....	412, 413
State Board of Special Examiners and Appraisers.....	415
State Board of Tax Commissioners.....	416-421, 423, 429, 433, 434, 435, 437 439, 444
State Canal Board	384, 388, 389
State Civil Service Commission, Secretary of.....	445
State Commission in Lunacy, Secretary of.....	448, 449, 451
State Commissioner of Agriculture.....	453, 454, 456-460
State Commissioner of Health	461, 464, 466
State Comptroller	293, 295, 296, 298, 300, 305-307
State Engineer and Surveyor	310, 312, 313, 319, 320, 327, 352, 373
State Engineer and Surveyor, Special Deputy....	314, 317, 320, 336, 340, 343 346, 348, 350, 368, 375, 377, 379-381
State, Secretary of. (See Secretary of State.)	
State Superintendent of Banks.....	468, 470, 471, 473, 475, 477, 479-481
State Superintendent of Elections	482
State Superintendent of Insurance..	486, 488, 502, 503, 505, 508, 509, 511, 513 515, 520, 523, 526, 527, 530, 534
State Superintendent of Prisons	539, 541
State Superintendent of Public Works.....	543, 544, 546, 548
State Water Supply Commission	549
Superintendent of Banks.....	468, 470, 471, 473, 475, 477, 479-481
Superintendent of Elections	482
Superintendent of Insurance....	486, 488, 502, 503, 505, 508, 509, 511, 513, 515 520, 523, 526, 527, 530, 534
Superintendent of Public Works, Deputy.....	543
Tax Commissioners, State Board of....	416-421, 423, 429, 433, 434, 435, 437 439, 444
Thompson, Ralph E., State Board Tax Commissioners.....	433
Water Supply Commission	549
Whalen, John S., Secretary of State..	277, 280, 281, 283, 284, 286, 288, 291-293
Wieting, Charles A., Commissioner of Agriculture.....	453, 454, 456, 457-460

658 PERSONS AND OFFICIALS WHO RECEIVED OPINIONS.

	PAGE.
Williams, Clark, Superintendent of Banks.....	480, 481
Wiltzie, E. M.	579
Woodbury, E. E., State Board of Tax Commissioners....	417-419, 434, 435 439, 444

Yale, John R.	571
--------------------	-----

Index to Opinions.

Adirondack Park:	PAGE.
construction proposed highways	327
Agency Italian Life Insurance Company, establishment of.....	523
Agricultural Law:	
calves, shipment of	456
Pure Food Law, Labels:	
Crown Hominy Feed, Kiln Dried	460
Durkee's Salad Dressing	457
Maple Butter and Maple Cream.....	454
Prepared Salt	459
Snyder's Salad Dressing	457
Susquehanna Hominy Chop	460
Van Oleum	458
quarantine regulation, enforcement of, by sheriff, Westchester county.	453
(See also Pure Food Law.)	
Aliens, filing deposition with Secretary of State.....	280
Amsterdam, alterations in sewer, whether State should pay for.....	346
Ancram, repair of bridge over mill pond.....	371
Appointment additional division engineers.....	312
Apportionment mortgage tax, basis of computation, etc.....	439
State aid, based upon Equalization Table, 1907.....	306
Appropriation by State Engineer of island in Mohawk river.....	379
Armories. (See State Armories.)	
Arsenals. (See State Arsenals.)	
Assembly Bill No. 1270 (Public Service Commission).....	557
Assembly, Member of:	
nomination candidate by Independence League.....	277
salary of	565
Assessments:	
corporations, E. Watson Gardiner Company.....	296
Railroad Y. M. C. A., Mechanicville.....	429
Silver Bay Association	423
Society of St. Johnland.....	583
oyster beds	420
property acquired for barge canal.....	416
property in streets and highways.....	434
special franchises, pipe lines, cables, etc., in Greater New York.....	435

Assessors:	PAGE.
determination of damage, sheep killed by dogs.....	421
town of Fowler, failure to take oath within statutory time.....	576
Assets, deduction of, in annual reports of Superintendent of Insurance..	503
Atchison, Topeka & Santa Fe Railroad, investment in bonds of, under	
section 100, Insurance Law	511
Atlantic Gulf & Pacific Company, Re, power of attorney.....	544
Auditing annual statements by Superintendent of Insurance.....	506
Automobiles, policies of insurance for damage to.....	513
Baldwinsville:	
construction of Barge Canal bridge.....	336, 377
Ballots, marking of	553
Bankers Life Insurance Company of New York.....	488
Banking Law, corporations:	
loans to directors or officers, restrictions, etc.....	468
mortgage loan and investment companies, general deposit business..	479
municipal, loans, etc.	471
national banks doing business as savings.....	473
savings banks, Union Dime Savings Institution, restriction number	
trustees	475
trust companies, directors, change in number of.....	470
loans, limit of	471
organized under laws of Pennsylvania, whether they can act as	
trustee for bondholder under mortgage given by corporation	
organized under laws of New York State, upon lands located	
therein	477
may not hypothecate securities.....	481
Banks:	
loans to directors or officers.....	468
national, cannot advertise or do business as savings.....	473
Banks and Trust Companies:	
bonds, credit under chapter 550, Laws 1907.....	305
loans by, limit of	471
methods of transacting business, protection when embarrassed, etc..	480
Barge Canal Law:	
additional expense for deepening locks.....	388
appointment division engineers	312
Black River Canal, change of route, expense of.....	382

	PAGE.
bridges, farm bridge Bartholomew road, Whitehall.....	375
farm bridge as right of way to highway.....	340
Mohawk river, Dunsbach ferry	350
Smith's Basin for Keenan Lime Company.....	343
Syracuse, Lake Shore & Northern Railway at Baldwinsville..	336, 377
Tonawanda creek, construction pier	415
Utica & Mohawk Valley Railway.....	314
contracts, No. 4, alteration agreement No. 2.....	389
No. 2, Waterford, retaining walls, etc., outside lands appropriated.	320
No. 6, proposed alteration	384
lands appropriated, forcible possession of.....	313
island Mohawk river	379
occupancy and use of, payment interest, etc.....	317
lease of surplus waters, reconstruction hydraulic race and tunnel,	
Lockport	352, 548
liens against moneys to be paid Jane E. Waugh.....	300
pollution waters Onondaga lake by Solvay Process Company.....	373
sewers, Amsterdam, expense of alterations.....	346
taxes, assessments of late owner.....	550
on property acquired for use of.....	416
Tonawanda creek improvement	380
Bartholomew road, Whitehall, construction of bridge.....	375
Bill posting, peddlers or hawkers license not sufficient for.....	564
Black River canal, change of route, expense, how payable.....	382
Blue Line, lease of lands within.....	546
Bonds:	
Atchison, Topeka & Santa Fe, investment in.....	511
Canaseraga creek improvement, issue of, for.....	549
Class "A" and Class "B".....	488
entitled to credit under chapter 550, Laws of 1907.....	305
pledges as collateral security, taxes, etc.....	433
recording officers, cancelling official undertaking.....	307
serial, exchange of, for new issue.....	511
State armory, 65th Regiment, Buffalo, expense of sale of.....	403
Boundary line, highways, method of procedure to establish.....	320
Brands, feeding stuffs, licenses for.....	460
Bridges:	
Barge canal:	
construction farm bridge at Whitehall	375
construction farm bridge as right of way	340
over Mohawk river at Dunsbach Ferry	350
Smith's basin for Keenan Lime Company.....	343
Syracuse, Lake Shore & Northern Railway at Baldwinsville..	336, 377
Tonawanda creek, construction new pier	415
Utica & Mohawk Valley Railway.....	314
highways, authority commissioner in repair of	371
town of Leroy, special meeting to submit proposition.....	573

Buffalo State Armory:	PAGE.
bonds, expenses of sale of	403
contracts for erection of	395
Business Corporations Law:	
certificate of incorporation, Nassau Co-operative Building and Loan Association	566
certificate of incorporation, Nickel Plate Elevated Company	288
certificate of incorporation, University Drug Shop	281
Calves:	
shipment of	456
Canal Law:	
term "canal" under article VII, section 8, State Constitution, leasing lands within "Blue Line," etc.....	546
Canals. (See Barge Canal.)	
Canandaigua Victor road, removal telephone poles	319
Canaseraga creek, issue bonds for improvement of.....	549
Cancellation lease, surplus waters, Lockport.....	548
Candidate, member of Assembly, nomination of, by Independence League..	277
Capital stock, certificate for increase of	283
Certificates:	
to transact insurance business.....	515
incorporation, Nickel Plate Elevated Company	288
University Drug Shop	281
increase capital, Second United Cities Realty Company	283
Chamberlain, city of New York, bonds of	307
Champlain canal, construction farm bridge at Whitehall	375
Champlain Stone and Cement Company, construction bridge for	343
Change of route, Black river canal, expense, how payable	382
Channel Tonowanda creek, widening and deepening of	380
Chiefs, Oneida Indians, petition in re tribal rights	262
Children, commitment of, to House of Good Shepherd, Utica	404
Cities:	
Amsterdam, alterations in sewer	346
Lockport, lease of surplus waters, construction hydraulic race and tunnel	352
Syracuse, State armory, hours of labor for employees	401
Syracuse, supply of water to State Fair grounds.....	276
New York, special franchise tax, enforcement, payment of.....	551
New York, special franchises, pipe lines, cables, tunnels	435
New York, supply of water to State arsenal	393
Yonkers, Saturday half-holiday, proposed legislation.....	568

Civil Service. (See State Civil Service.)	PAGE.
Class "A" and Class "B" bonds	488
Clinton county, agreement supervisors with Plattsburg hospital	407
Clyde, village of, term of office of police justice	553
Cocaine, sale and labeling of	412
Collection poll taxes, enforcement, payment of	310, 579
Columbia Insurance Company, policies on automobiles	513
Commissioner of Agriculture, seizure of calves by agents of	456
Commissioner of Highways, authority of, over bridge repairs	371
Commutation of sentence	539
Compensation, health officers, power of local boards to increase	464

Comptroller. (See State Comptroller.)

Constitutionality of Labor Law:

Constitutionality of clause relating to prevailing rate of wages (Labor Law, § 3)	588
Constitutionality of Highway Manual Law	597
Construction highways through State lands	327

Contracts:

Barge canal:

No. 4, alteration agreement No. 2	389
No. 6, alterations proposed	384
No. 2, retaining walls, etc., Waterford	320
provisions Eight Hour Law, compliance with, by Empire Engineering Corporation	348-368
sale of real property, whether taxable	419
State Armories, Buffalo, authority commissioner to let	395
Syracuse, hours of labor for employees	401
State institutions, supply of articles to	592
Superintendent of Public Works, purchase lumber in open market... ..	543
re power of attorney	547

Corporations:

banks and trust companies, limit of loans by	471
directors and officers, restrictions regarding loans to	468
Union Dime Savings Institution, restriction number trustees	475
insurance, agency Italian Life Company	523
Bankers' Life Insurance Company of New York	488
domestic life, nonparticipating	509
Equitable Life Assurance Company and Germania Insurance Company, election directors	520
Equitable Life Assurance Society, investment bonds, Atchison, Topeka, and Santa Fe	511
Federal Life and Casualty Insurance Association	515
Lawyers' Title Insurance and Trust Company	503
life insurance (Insurance Law, §§ 13, 16, 100)	502

Corporations — Continued:

PAGE.

Maryland Casualty Company of Baltimore.....	526
Metropolitan Life Insurance Company, nonparticipating policies..	509
policies against damage to automobiles	513
Security Mutual Life Insurance Company "Select and Ultimate Method"	530
standard forms, Postal Life Insurance and Security Mutual Life Insurance Company	527
Traders and Travelers' Accident Company of New York, insertion clause in contract	486
United States Life Insurance Company, return on market value securities	505, 508
Washington Life Insurance Company, purchase money mortgages.	502
Jardine Matheson Company, Limited, designation of person on whom process may be served	292
Keenan Lime Company, railroad tracks leading to kiln	343
Labor Law, compliance with, by Empire Engineering Corporation. .	348, 368
mortgage, loan and investment, general deposit business	479
Mount Sinai Alumnae Association, annuities to members	284
municipal, insuring property by officers village.....	582
Nassau Co-operative Building and Loan Association.....	566
Nickel Plate Elevated Company, certificate of	288
Second United Cities Realty Company, increase capital	283
Solvay Process Company, pollution Onondaga lake	373
special franchise tax, enforcement, payment of.....	551
special franchises, pipe lines, tunnels, cables, etc.	435
taxation, E. Watson Gardiner Company	297
Railroad Y. M. C. A., Mechanicville	429
Silver Bay Association	423
Society of St. Johnland.....	583
trust companies, change in number of directors	470
may not hypothecate securities, etc.	481
University Drug Shop, use of word "University" as part of title....	281

Counties:

Clinton, agreement with supervisors re Plattsburg City Hospital....	407
Columbia, repair of bridge at Ancram	371
Erie, sale of bonds, Buffalo State Armory, expense of.....	403
Hamilton and Herkimer, highways through State lands	327
Kings, nomination candidate for Member of Assembly.....	277
special election, Fourteenth Assembly District	482
Madison, tribal rights, Oneida Indians	262
Orleans, term of office of superintendent of the poor.....	594
Saratoga, appropriation, island in Mohawk river	379
Westchester, fees to sheriff for enforcing quarantine	453
County Law, killing of sheep by dogs	421
County treasurers, bonds of	307
Criminal actions, return of photographs of defendants in.....	591
"Crown Hominy Feed, Kiln Dried," labels for sale of	480

Deepening channel:	PAGE.
Tonawanda creek	380
Deepening locks, Barge canal, change in plans for	388
Defendants in criminal actions, return of photographs to.....	591
Depositions, aliens, filing with Secretary of State.....	280

Directors:	
banks, restrictions regarding loans	468
insurance, election of	520
prohibition in re moneys for procuring loans to.....	534
trust companies, change in number of	470
Division engineers, authority of State Engineer to appoint	312
Dower, determination of value of inchoate right of	418
Dunsbach Ferry, bridge over Mohawk river	350
Durkee's Salad Dressing, labels for sale of	457

Earth closets:	
discontinuance of, by boards of health	466
Eight Hour Law, compliance with, by corporations on contract with State	348, 368, 401
Elections, directors insurance companies.....	520

Election Law:	
ballots, marking of, under sections 81, 105-110.....	555
inspectors of election, term office chairman board of.....	594
Metropolitan Elections District, special election, Kings county, Fourteenth Assembly District	482
notices of election for senators	286, 291
party nominations, whether Independence League may nominate candidate for member of Assembly	277

Elections:	
Primary Election Law, new and minor parties.....	586
villages, qualification of voters, etc.....	571

Embalmers. (See Undertakers.)

Empire Engineering Corporation, compliance with Eight Hour Law....	348, 368
--	----------

Employees:	
cities, signing release regarding wages.....	580
Yonkers, Saturday half-holidays for.....	568
contracts, hours of labor	348, 368, 401
public corporations (Hudson-Fulton Celebration) whether under civil service	445
Engineers, division, appointment of additional	312
Equalization table, apportionment State aid based on	306

Equitable Life Assurance Company:	PAGE.
election directors	520
investment railroad bonds	511
Erie county, bond issue for Sixty-fifth Regiment Armory, Buffalo.....	403
Erie Railway Company, construction new pier and bridge across Tonawanda creek	415
Executive Law:	
authority State Engineer to appoint division engineers and clerks...	312
notary public, methods and time of filing oath.....	567
Exemption taxation:	
property purchased with pension money	437
Railroad Y. M. C. A., Mechanicville	429
Silver Bay Association	423
Society of St. Johnland	517
Expenses:	
appointee of commissioner of health	295
change of route, Black river canal, how payable	382
election, filing statement of	292
insurance companies "Select and Ultimate Methods".....	530
locks, Barge canal, deepening of	388
sale of bonds, Erie county, State armory, Buffalo	403
sewer, Amsterdam, alterations in	346
Extension purposes Mount Sinai Alumnæ Association	284
E. Watson Gardiner Company, taxation of	297
Farm bridges:	
whether State should build	340, 375
Federal Life and Casualty Insurance Association (Ins. Law, § 100)	515
Feeding stuffs, labels	460
Fees, sheriffs', for enforcing quarantine regulations.....	453
Fire Insurance Companies. (See Insurance Law.)	
Fire purposes, use of money for, out of general village fund.....	555
Flavoring extract "Van Oleum," label for sale of	458
Fowler, town of, oath of office of assessor.....	576
General Tax Law:	
bonds entitled to credit under chapter 550, Laws 1907	305
Germania Insurance Company, election directors.....	520
Greater New York, assessment pipe lines, cables, tunnels, etc., in	435
Groveland, town of, change from labor to money system.....	578
Guard-gate, Herkimer, construction of	314

Half-holidays:	PAGE.
city of Yonkers	568
Hamilton and Herkimer counties, proposed highways through State lands.	327
Hastings' bills, licenses for pharmacists	413
Health Officers:	
increase compensation of	464
traveling expenses of	295
Herkimer, erection of guard-gate at	314
Highway Commissioners:	
authority regarding bridge at Ancram	371
right of, to remove telephone poles	319
Highway Law:	
money system, poll-tax collection.....	310, 579
State aid, apportionment of, by Comptroller	306
Highway Manual Law (chap. 546, Laws 1904) constitutionality of.....	597
Highways:	
boundary lines, method of procedure to establish	320
bridges, Ancram, repair of	371
bridges as right of way	340
change from labor to money system, Groveland.....	578
Hamilton and Herkimer counties, through State lands	327
telephone poles, right of commissioner to remove.....	319
Hospitals:	
Hudson River State Hospital, items in Supply bill.....	451
Industrial pursuits, receipt of moneys from	449
Plattsburg City Hospital, agreement with supervisors	407
Utica and Rochester State Hospitals, construction of (Chap. 561, Laws 1907). . .	449
House of Refuge, Randall's Island, commitment juvenile delinquents to	569
House of The Good Shepherd, Utica, commitment children to.....	404
Hudson-Fulton Celebration Commission, whether employees of, are under civil service	445
Hudson River State Hospital, item Supply Bill 1906, for "sun-room"....	451
Hydraulic race and tunnel at Lockport, reconstruction of.....	352
Improvement Canaseraga Creek, issue of bonds for....	549
Improvement Tonawanda Creek	380
Inchoate right of dower, method of determining value of.....	418
Increase capital Second United Cities Realty Company.....	283

	PAGE.
Independence League, candidate for Member of Assembly.....	277
Indian Law, tribal rights of Oneida Indians.....	282
Industrial pursuits, State hospitals, receipt moneys from.....	449
Insanity Law, § 47, licenses, physicians.....	448
Inspectors of election, term of office of chairman, board of.....	594
Institutions for the insane, licenses physicians, etc.....	448
Insurance Company of North America, policies on automobiles.....	513
 Insurance Law, Corporations:	
agency Italian Life Insurance Company.....	523
annual statements, audit by Superintendent Insurance.....	505, 508
Bankers' Life Insurance Company of New York, Class "A" and Class "B" bonds	488
directors or officers in New York State, prohibition regarding loans..	534
domestic life, nonparticipating policies.....	509
Equitable Life Assurance Company, election directors.....	520
investment bonds Atchison, Topeka and Santa Fe.....	511
Federal Life & Casualty Insurance Association, authority to trans- act business	515
Germania Insurance Company, election directors.....	520
Insurance Company of North America and Columbia Insurance Com- pany, policies on automobiles	513
Lawyers' Title Insurance & Trust Company.....	503
life insurance (Secs. 13, 16, 100, Insurance Law).....	502
Maryland Casualty Company of Baltimore.....	526
Metropolitan Life Insurance Company, nonparticipating policies.....	509
municipal, insurance property by officers of village.....	582
Security Mutual Life Insurance Company, "Select and Ultimate Method"	530
standard forms of policies, Postal Life and Mutual Life Companies..	527
Traders & Travelers' Accident Company, insertion clause in contract..	486
United States Life Insurance Company, return on market value securities	505, 508
Washington Life Insurance Company, purchase money mortgages (Secs. 13, 16, 100).....	502
Interest, payment of, by State for Barge Canal lands.....	317
Investments insurance companies in railroad bonds.....	511
Island in Mohawk River, appropriation of, by State Engineer.....	379
Italian Life Insurance Company, establishment agency.....	523
 Jardine, Matheson & Company Limited, designation of person upon whom process may be served.....	
Juvenile delinquents, commitment of to House of Refuge, Randall's Island, and State Industrial School, Rochester.....	292 569

	PAGE.
Keenan Lime Company, provision for bridge to kiln.....	343

Kings County, nomination candidate for Member of Assembly.....	277
special elections in	482

Labels:

Pure Drug Act, cocaine	412
Pure Food Law, Crown Hominy, Feed Kiln Dried.....	460
Durkee's Salad Dressing	457
Maple Butter and Maple Cream.....	454
Prepared Salt	459
Snyder's Salad Dressing	457
Susquehanna Hominy Chop	460
Van Oleum	458

Labor Law:

city employees, singing release regarding wages.....	580
corporations, compliance with by.....	348, 368, 401
prevailing rate of wages, constitutionality of clause in section 3....	588

Lands appropriated by State:

continued occupancy, payment interest.....	317
forcible possession of	313
walls and areas outside of.....	320
Lands within "Blue Line," lease of.....	546
Lawyers' Title Insurance & Trust Company, deduction of assets in report.	503
Lease of lands within "Blue Line".....	546
Lease of surplus waters at Lockport.....	352, 548
Leroy, town of, special meeting for submission bridge proposition.....	573

Licenses:

pharmacists (Hastings Bill).	413
physicians, under section 47, Insanity Law.....	448
tags and labels, feeding stuffs.....	460
undertakers, for practice in another State	411
revocation of	410
veterans, business of bill posting.....	564
Liens against moneys to be paid by State to Jane E. Waugh.....	300

Loans:

banks and trust companies	471
made by directors insurance companies.....	534
to directors of banks, restrictions regarding	468

Lockport:	PAGE.
reconstruction hydraulic race and tunnel at.....	352
surplus waters, notice to cancel lease.....	548
Locks, Barge Canal, additional expense for deepening.....	388
Lumber, purchase of, in open market by Superintendent of Public Works.	543
 Madden Lumber Company:	
contract with Superintendent of Public Works.....	543
Maple Butter and Maple Cream, labels for sale of	454
Maryland Casualty Company of Baltimore, "sprinkler's leakage insurance"	526
 Member of Assembly:	
Independence League, candidate for	277
salary of	565
Membership Corporations Law, extension purposes Mt. Sinai Alumnae Association	284
Metropolitan Elections District, special election, Kings county	482
Metropolitan Life Insurance Company, nonparticipating policies.....	509
 Mohawk river:	
appropriation island in	379
construction dam No. 7, alteration in sewer	346
Dunsbach Ferry, bridge over	350
Money system, highways, collection poll tax	310
 Moneys:	
derived from sale of bonds, Sixty-fifth Regiment Armory, Buffalo..	403
liens against	300
prohibition regarding receipt of, by directors insurance companies..	534
receipt of, from industrial pursuits, State hospitals	449
use of, from general fund fee, fire purposes, villages.....	555
Mortality tables, nearest birthday taken in computing by	418
Mortgage loan and investment companies, general deposit business, by..	479
 Mortgage Tax Law:	
apportionment tax, basis computation, etc.	439
conditional sale personal property, whether taxable	417
sale of real property, whether taxable, amount unpaid on contracts, etc.	419
trust mortgages, bonds pledged on collateral security, tax due upon..	433
(See State Board of Tax Commissioners.)	
Mount Kisco, village of, sewage disposal system	461
Mount Sinai Alumnae Association, annuities to members	284

Municipalities:

PAGE.

officers of, right to insure property in co-operative fire insurance companies	582
sewage disposal system, village of Mount Kisco	461
wages of employees, signing release regarding	580

Mutual or Co-operative Fire Insurance Companies:

insurance, village property in	582
--	-----

Nassau Co-operative Building and Loan Association	556
National banks, advertising and doing business as savings banks	473
National Commercial Bank of Albany, re power of attorney	544
New and minor parties, amendments Primary Election Law to apply to	586
New York State Arsenal, water rents, liability of State for	393
Nickel Plate Elevated Company, incorporation of	288
Nominations, Independence League	277
Nonparticipating policies, issue of, by Metropolitan Life Company	509
Notary public, method and time of filing oath of office	567

Notices:

of election for Senators	286-291
of liens against moneys to be paid by State	300
to cancel lease of surplus waters at Lockport	548

Nuisances:

earth closets, authority local health boards to abolish	466
pollution waters Onondaga lake by Solvay Process Company	373
Nurses, pensions for	284

Oath of office:

assessor, town of Fowler, failure to take	576
notary public, method and time of filing	567
Officers or directors insurance companies, prohibition regarding receipt of moneys for procuring loans	534
Official undertakings, power of Comptroller to cancel	307
Oneida Indians, tribal rights of	262
Oneida lake, Sylvan Beach, Contract No. 4, alteration agreement	389
Onondaga lake, pollution waters of	373

	PAGE.
Orange County Traction Company, agreement for conditional sale of property to	417
Orleans county, superintendent of the poor, term of office of.....	595
Ownership island in Mohawk river	379
Oyster beds, assessment of	420
 Party nominations	 277
 Peace officers:	
whether superintendents of prisons are.....	541
 Penal Code:	
sections 694, 697, prisoners, commutation sentence.....	539
section 379a, return of photographs of defendants in criminal actions.	591
section 405a, sale of cocaine	412
Penitentiaries and reformatories, whether superintendents are "peace officers"	541
"Pensioner," application of word in tax exemption	437
Pensions for nurses	284
Petition, chiefs of Oneida Indians	262
Pharmacists, licenses, application for	413
Photographs, defendants in criminal actions, return of.....	591
Physicians, licenses under section 47, Insanity Law.....	448
 Plattsburg City Hospital:	
agreement with supervisors of Clinton county	407
Police justice, village of Clyde, term of office of.....	553
 Policies:	
domestic life, nonparticipating	509
on automobiles	513
standard forms	527
 Poll tax:	
highways, enforcement, collection of.....	310, 579
Pollution waters Onondaga lake	373
Poor, Clinton county, agreement Plattsburg City Hospital	407
Poor, Superintendent of, Orleans county, term of office of.....	595
Postal Life Insurance Company, standard form of policy.....	527
Power of attorney from Atlantic Gulf and Pacific Company to National Commercial Bank	544
Prepared salt, label and mixture of	459
Prevailing rate of wages, constitutionality of clause relating to.....	588

Primary Election Law:	PAGE.
new and minor parties.....	586
Prisoners, commutation of sentence.....	539

Prisons. (See State Prisons.)

Property:	
acquired for Barge canal purposes, tax on.....	416, 550
conditional sale of, whether taxable	417
purchased with pension money, exemption taxation	437
Propositions, submission of, for raising village moneys.....	555
Public corporations, whether employees of, are under civil service	445

Public Health Law:	
health officers, increase compensation of	464
traveling expenses of	295
licenses, pharmacists	413
municipalities, sewage disposal, Mount Kisco	461
nuisances, discontinuance of, by local boards.....	466

Public Officers Law:	
authority State Engineer to appoint additional division engineers..	312
notary public, oath of office of.....	567
power of Comptroller to cancel official undertakings	307

Public Officers:	
New York city, exaction signing release by employees regarding wages.	
etc.	580

Public Service Commission:	
memorandum of Attorney-General	557
Purchasing committee of superintendents of State institutions, contracts	
for single articles, etc.....	593
Pure Drug Act, labels, cocaine	412
Pure Food Law. (See Agricultural Law.)	

Qualification of voters:	
upon village propositions	571
Quarantine regulations, fees for enforcement of	453

Railroad Y. M. C. A., Mechanicville:	PAGE.
taxation	429
Railroads:	
Atchison, Topeka & Santa Fe, investment in bonds of	511
bridges, construction of, by State on account of Barge canal	314, 336, 343 377, 415
Real Property Law:	
aliens, filing deposition with Secretary of State	280
Real property:	
Railroad Y. M. C. A., Mechanicville, exemption tax	429
Silver Bay Association, exemption tax	423
Society of St. Johnland, exemption tax	583
taxation conditional sale	417
taxation on contracts	419
Recording officers, New York city, bonds of	307
Red Creek, village of, various questions on General Village Law	555
Refund of taxes, power of Comptroller regarding	294
Registered bonds in name of State officers, credit under chapter 550, Laws 1907	305
Releases regarding wages, signing of, by city employees	580
Repair of bridge at Ancram, authority of Commissioner regarding	371
Reports:	
annual statement insurance companies, audit of, by Superintendent of Insurance	505, 508
Bankers' Life Insurance Company of New York	488
Lawyers' Title Insurance and Trust Company	503
Tax Law, section 43, are public documents	444
Revocation licenses of undertakers and embalmers	410
Roads. (See Highways.)	
Rochester State Hospital:	
receipt of moneys from industrial pursuits	449
Salad dressing:	
labels for sale of	457
Salaries, members of Assembly	565
Sale of bonds, Erie county, Buffalo State Armory, expense of	403
Sale of stock, tax upon	299
Saturday half-holidays, city of Yonkers	568

Savings Banks:

	PAGE.
national banks cannot do business as	473
restriction number of trustees	475
Second United Cities Realty Company, increase capital	283

Secretary of State:

filing depositions aliens with	280
statement election expenses	293
issue notices election for Senators	286, 291
Security Mutual Life Insurance Company, standard forms for policies...	527
Select and ultimate method insurance companies.....	530
Senate Bill No. 682, memorandum Attorney-General on.....	557
Senators, notices of election for	286, 291
Sentences, prisoners, commutation of	539
Serial bonds, exchange of, for new issue	511
Service of process on foreign corporations doing business within State..	292
Sewerage, village of Mount Kisco, disposal of	461
Sewers, city of Amsterdam, alterations in re Barge canal	346
Sheep killed by dogs, determination damage by assessors	421
Sheriff Westchester county, fees for enforcement quarantine	453
Shipment of calves, seizure of, during	456
Silver Bay Association, taxation	423
Sixty-fifth Regiment Armory, Buffalo, contract for erection of, etc.....	395
Snyder's Salad Dressing, labels for sale of	457
Society of St. Johnland, taxation.....	583
Solvay Process Company, pollution waters by	373

Special elections:

Kings county, Fourteenth Assmby District	482
--	-----

Special franchise tax:

New York city, enforcement payment of.....	551
--	-----

Special franchises:

pipe lines, cables, tunnels, etc., Greater New York	433
---	-----

Special town meetings:

Groveland, change from labor to money system.....	578
Leroy, submission bridge proposition	573
Sprinkler's leakage insurance	526
Standard forms insurance, policies differing from.....	527

State aid:

highways, apportionment of, by Comptroller	306
boundary lines, establishment of	320

State Armories:	PAGE.
Buffalo, 65th Regiment, authority Commissioner to let contracts....	395
issue of bonds	403
Syracuse, hours of labor for employees on construction of.....	401
 State Arsenals, water rents, liability of State for.....	 393
 State Board of Charities:	
agreement between supervisors Clinton county and Plattsburg Hospital	407
House of Good Shepherd, Utica, commitment children.....	404
House of Refuge, Randall's Island, commitment delinquents to.....	569
State Industrial School, Rochester, commitment delinquents to....	569
 State Board of Embalming Examiners:	
power to revoke licenses	310
practice in another State, licenses for.....	311
 State Board of Tax Commissioners:	
Mortality Tables, nearest birthday taken in computing by.....	418
mortgage tax, agreement to conditional sale of personal property, whether taxable	417
apportionment of, basis for computation, etc.....	439
oyster beds, whether assessed as real or personal property.....	420
property placed in streets and highways by abutting owners, assessed locally	434
purchased with pension money, application word "pensioner" ..	437
reports are public documents under section 43, Tax Law.....	444
sheep killed by dogs, determination of damage by assessors.....	421
special franchise tax, New York city, enforcement payment of.....	551
special franchises, assessment pipe lines, cables, tunnels, bridges, in Greater New York	435
 State Civil Service:	
Hudson-Fulton Celebration Commission, employees of.....	445
 State Commission in Lunacy:	
licenses for establishment institutions for insane.....	448
physicians, five years service in hospitals, etc.....	448
 State Commissioner of Health:	
additional compensation for health officers.....	464
traveling expenses of officers appointed by.....	295

State Comptroller:	PAGE.
apportionment State aid by.....	306
bonds, Canaseraga creek, authority of, to countersign and sell.....	549
power of, to cancel official undertakings.....	307
recognition of liens by	300
refund of taxes by.....	294
 State Constitution:	
tern "canal," "blue-line," etc.....	546
 State Engineer and Surveyor:	
authority to appoint Division Engineers	312
authority to build bridge at Baldwinsville.....	336, 377
authority to construct farm bridge Bartholomew road, Whitehall..	375
authority to construct farm bridge isolated by Barge Canal.....	340
authority of, to prevent pollution Onondaga lake.....	373
Black River canal, change of route.....	382
construction of bridge at Smith's Basin.....	343
construction guard-gate at Herkimer.....	314
possession island Mohawk river	379
possession lands by, for Barge Canal.....	313
Tonawanda creek improvement	380
 State Fair Grounds, Syracuse:	
supply of water to, from city conduits.....	276
 State Finance Law:	
State hospitals, receipt of moneys from industrial pursuits..	449
 State Forest Preserve:	
Adirondack Park, proposed highways in.....	327
 State Industrial School, Rochester:	
commitment juvenile delinquents to.....	569
 State Institutions:	
contracts for purchase of articles for.....	592
House of Refuge, Randall's Island, commitment delinquents to....	569
Hudson River State Hospital, supply bill for.....	451
Rochester and Utica State Hospitals, receipt moneys from industrial pursuits . . .	449
State Industrial School, Rochester, commitment juvenile delinquents to . . .	569

State Lands:	PAGE.
highways through	327
State Officers:	
appointees Commissioner of Health, traveling expenses of	295
State Prisons:	
reformatories and penitentiaries, whether superintendents are "peace officers"	541
State Superintendent of Banks:	
duty of regarding embarrassed banks and trust companies	480
State Superintendent of Insurance:	
audit of annual statements by	505, 508
State Superintendent of Prisons:	
action regarding custody of Thomas McKeon	539
State Water Supply Commission:	
issue bonds for improvement of Canaseraga creek	549
Stock Corporations Law, increase capital Second United Cities Realty Company	283
Stocks, tax upon sales of	299
Stock Transfer Tax Law:	
refund of taxes by Comptroller	294
single tax upon one sale of stock (Chap. 241, Laws 1905)	299
Superintendent of the Poor, Orleans county, term of office	595
Superintendent of Public Works:	
contracts, power of attorney	544
right of, to purchase lumber in open market	543
Superintendent State Institutions, purchasing committee for	592
Supervisors, Clinton county, agreement with Plattsburg City Hospital . .	407
Supply Bill 1906, "sun-room" Hudson River Hospital	451
Supply of articles to State institutions, contracts for	592
Surplus Waters, Canals:	
lease of	546
Lockport, lease of	352
"Susquehanna Hominy Chop" labels for sale of	460
Sylvan Beach, Contract No. 4, east end Oneida lake	389

Syracuse, Lake Shore & Northern Railway:	PAGE.
construction bridge at Baldwinsville.....	336, 377

Syracuse:

State armory, compliance with Labor Law in erection of.....	401
State Fair grounds, supply of water to.....	276

Tax Law, assessments:

E. Watson Gardiner Company.....	297
oyster beds.....	420
Railroad Y. M. C. A., Mechanicville.....	429
Silver Bay Association.....	423
Society of St Johnland.....	592
bonds entitled to credit under chapter 550, Laws 1907.....	305
recording officers, etc., power of Comptroller to cancel official undertaking.....	307
highways, apportionment State aid by Comptroller.....	306
mortality tables, nearest birthday taken in computing by.....	418
poll tax, collection of.....	310, 579
property in streets and highways.....	434
property purchased with pension money.....	437
reports are public documents under section 43.....	444
(See also State Board of Tax Commissioners.)	

Taxation:

contracts real property.....	419
(See also Mortgage Tax Law.)	

Taxes:

Barge Canal, liability late owner for.....	550
property acquired for.....	416
due upon mortgage for bonds pledged as collateral.....	433
highways, enforcement payment.....	310
refund of, by Comptroller.....	294
single sales of stock.....	299
special franchise New York city, enforcement payment of.....	551
special franchises, pipe lines, tunnels, cables, etc., in Greater New York.....	435

(See also Stock Transfer Tax Law.)

	PAGE
Telephone and telegraph companies, removal poles from highways.....	319
Titles, University Drug Shop, use of word "University".....	281

Tonawanda Creek:

bridge across	415
-channel, deepening of	380

Towns:

Ancram, repair of bridge	371
Collectors, enforcement payment poll tax by.....	310
Fowler, oath of office of assessor.....	576
Groveland, special meetings for change from labor to money system.	578
Leroy, special meeting for submission bridge proposition.....	573
railroad aid bonds	583
Traders & Travelers Accident Company, insertion certain clause in contract	13
Traveling expenses, health officers.....	295
Transfers of stock, tax upon.....	299
Tribal rights, Oneida Indians	262

Trust companies:

bonds, credit under chapter 550, Laws of 1907.....	305
directors, change in number of	470
loans by, limit of	471
may not hypothecate securities, etc.....	481
trustees for bondholders, etc.	477

Trustees:

savings banks, restriction number of.....	475
villages, eligibility to hold office of.....	555

Undertakers:

licenses for practice in another State.....	411
revocation of	410
Union Dime Savings Institution, restriction number of trustees.....	475
United States Insurance Company, return on market value of securities, etc.	505-508
University Drug Shop, use of word "University" as part of title..	281
Utica & Mohawk Valley Railroad Company, construction bridge.....	314
Utica State Hospital, receipt of moneys from industrial pursuits.....	449

Value inchoate right of dower:

method of determining	418
Van Oleum, flavoring extract, labels for sale of.....	458
Veterans, license for bill posting.....	564
Village Law, elections, qualification voters upon propositions.....	571

Villages:

Clyde, term of office police justice elected to "fill vacancy".....	553
Herkimer, erection guard-gate at.....	314
Mount Kisco, sewage disposal system.....	461
officers, right of, to insure property in mutual or co-operative fire insurance companies	582
Red Creek, various questions on General Village Law.....	555
taxes on property acquired for Barge Canal.....	416, 550
trustee, eligibility to hold office of.....	555
Waterford, construction Barge Canal, Contract No. 2..	320
Whitehall, construction bridge over Champlain Canal.....	375
taxes on property acquired for Barge Canal.....	416
Voters, qualification of, on village propositions.....	571

Wages:

city employees, signing release by.....	580
prevailing rate of, constitutionality of clause relating to.....	588
Washington Life Insurance Company (Secs. 13, 16, 100, Insurance Law)..	502
Water, lease of surplus, Lockport.....	352
Water rents, State arsenals, liability of State for.....	393
Water supply, State Fair grounds, Syracuse.....	276
Waterford, Contract No. 2, construction Barge Canal.....	320
Waugh, Jane E., liens against moneys to be paid to.....	300
Westchester county, enforcement quarantine regulations by sheriff, fees, etc. . .	453
Whitehall, farm bridge at Bartholomew road.....	375
Widening and deepening channel Tonawanda creek.....	380

Yonkers, City of:

half-holidays for laborers and employees.....	568
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